

000275

COMMITTEE ACTION SHEET

55  
10/21

COUNCIL DOCKET OF \_\_\_\_\_

☐ Supplemental   ☐ Adoption   ☐ Consent   ☐ Unanimous Consent   Rules Committee Consultant Review

R -

O -

Changes to the Elections Campaign Control Ordinance

☒ Reviewed   ☐ Initiated   By Rules   On 9/03/08   Item No. 3

RECOMMENDATION TO:

Support staff recommendations with change of specific nomenclature to "Professional Expense Fund" from "Legal Defense Fund" to more accurately reflect the use and intent of the fund. Councilmember Young specifically did not support the additional filing requirement due to its onerous nature.

VOTED YEA: Madaffer, Frye, Young, Hueso, Peters

VOTED NAY:

NOT PRESENT:

CITY CLERK: Please reference the following reports on the City Council Docket:

REPORT TO THE CITY COUNCIL NO.

INDEPENDENT BUDGET ANALYST NO.

COUNCIL COMMITTEE CONSULTANT ANALYSIS NO.

OTHER:

Ethics Commission's August 20, 2008, memorandum; Ethics Commission's September 2, 2008, update of proposed amendments

COUNCIL COMMITTEE CONSULTANT

Glype Lowe

000277

**CITY OF SAN DIEGO  
ETHICS COMMISSION**

**Office of the Executive Director**

**MEMORANDUM**

**DATE:** August 20, 2008

**TO:** The Committee on Rules, Open Government and Intergovernmental Relations

**FROM:** Stacey Fulhorst, Executive Director

**SUBJECT:** Election Campaign Control Ordinance [ECCO]  
(San Diego Municipal Code sections 27.2901, et seq.)

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On June 11, 2008, the Ethics Commission presented a series of proposed amendments to the City's campaign laws to the City Council Rules Committee. At that time, the Rules Committee approved the package of proposed amendments and forwarded them to the full City Council, with one exception: the proposal to increase contribution limits was forwarded to the full City Council for further discussion. Since that time, however, several additional issues have arisen concerning various provisions in ECCO and the Commission would like the Rules Committee to consider the following additional changes:

*Additional Filing Requirement*

In accordance with the filing schedule outlined in state law, local candidates must file several "pre-election statements" in the months leading up to a City election. Specifically, for this year's June 3rd election, candidates had to file a statement by March 24, covering the period ending March 17, and another statement by May 22, covering the period ending 17 days before the election. Their next campaign statements were not due until July 31, well after the election, and covered the period from the last statement through June 30. In other words, information regarding contributions received and expenditures made during the last 16 days before the election is not disclosed to the public until approximately two months after the election. State law includes a similar time table for filings required in advance of a November election.

The Commission has received suggestions that City candidates should be required to disclose all campaign activities within twenty-four hours. Twenty-four hour filings could be extremely burdensome for candidates and their treasurers. In the heat of a campaign, it can be difficult for candidates and treasurers to gather information regarding the contributions that have been

accepted by agents of the committee on a given day. To require them to do this every day would be especially onerous. Moreover, because ECCO requires candidates to obtain contributor information before depositing a contribution, and because a contribution must be disclosed as received even if it has not yet been deposited, a twenty-four hour filing requirement would likely necessitate frequent amendments of their campaign statements.

In light of the difficulties that would accompany twenty-four hour reporting, the Commission recommends adding one more pre-election filing in order to provide the public with additional information before election day. Put another way, requiring one additional campaign statement would *strike the appropriate balance between a desire for extra transparency and the interest in minimizing the burdens placed on campaign committees.*

Specifically, the Commission recommends amendments to ECCO that would require City candidates to file a third pre-election campaign statement on the Friday before a Tuesday election, covering the period through the Thursday before the election. It is relevant to note that the City of Los Angeles currently imposes a similar additional filing requirement on its City candidates, and the Los Angeles Ethics Commission staff reports that there do not appear to be any associated difficulties in terms of compliance.

#### *Legal Defense Funds*

During the 2007 state legislative season, the City of San Diego sponsored Assembly Bill 1441. This bill was ultimately approved and signed by the Governor in October of 2007. It amended state law to provide that local candidates may establish and maintain separate committees and bank accounts for legal defense fund purposes. Prior to the passage of this law, local candidates were required to maintain legal defense funds within an existing campaign committee, which effectively required them to co-mingle legal defense and campaign funds.

After the law was approved, the FPPC proposed a corresponding Regulation delineating the various rules associated with local legal defense funds. Because the initial proposed Regulation conflicted with the current legal defense fund rules in ECCO in several respects, the Commission staff worked with the FPPC staff on amendments to the proposed Regulation. These efforts were successful and on August 14, 2008, the FPPC approved the final Regulation (18530.45).

The FPPC Regulation requires our local legal defense fund laws to be at least as strict as the state's laws in three specific areas: the establishment of a legal defense committee, recordkeeping requirements, and reporting obligations. The proposed changes to ECCO meet these standards, and in fact closely follow the state's guidelines. In all other areas, the FPPC Regulation expressly permits the City to tailor its legal defense fund provisions in the manner it deems most appropriate, regardless of whether such laws are more or less restrictive than state law. Thus, the proposed amendments to the City's legal defense fund laws largely keep intact most of the framework that currently exists in ECCO. Many of the proposed changes simply

reflect the fact that legal defense funds no longer must be subsumed within an existing campaign committee. In other words, the proposed amendments recognize the ability of a candidate or elected official to create a new and distinct legal defense committee that can collect and spend contributions through its own separate and distinct legal defense checking account.

In addition to proposing amendments that reflect the ability to create separate legal defense committees, the Commission is proposing the following policy modifications associated with legal defense funds:

- The City's current legal defense fund provisions allow a contributor to give a candidate or officeholder up to \$250 per year per audit or legal proceeding, over and above what the contributor may give for campaign purposes. The Commission proposes to raise the legal defense contribution limit to \$1,000 per calendar year. In addition, the Commission proposes that the limit be tied to the same dollar amount that exists for campaign contributions (currently, there is no connection between the two limits). This would be accomplished by setting the limit so that it is always equal to the campaign contribution limit (which is indexed every two years in accordance with changes to the Consumer Price Index). In other words, whenever campaign contribution limits are increased through indexing, the contribution limit for legal defense funds would automatically be increased to the same amount.
- ECCO currently states that the creation of a legal defense fund is the only means by which a candidate or elected official may solicit and accept contributions to pay for the costs of responding to an audit or enforcement action. In other words, under current law, candidates and elected officials are not permitted to solicit or accept new campaign contributions for legal defense purposes without first establishing a "legal defense fund" to accept those contributions. (They are, however, permitted to use existing campaign funds for legal defense purposes in accordance with the guidelines in state law.) This provision prevents candidates and officials from collecting new contributions for their legal defense without first publicizing the fact that they are the subject of an Ethics Commission investigation (because they are required to provide a description of the action when they establish the legal defense fund). Thus, if a need for legal defense funds occurs in the midst of an election, it forces the candidate to decide between giving opponents potentially damaging information, or foregoing the ability to collect new legal defense fund contributions to pay legal expenses. There is arguably no harm to anyone but the candidates if they are allowed to solicit and use new campaign contributions to pay for legal bills, since they would essentially be using campaign funds that could be used for purposes of campaign advocacy on attorney's fees. Accordingly, the Commission recommends deleting the exclusivity provision.
- Both the current and proposed legal defense fund laws state that within six months of the conclusion of all audits and proceedings for which legal defense funds were collected, all

leftover funds must be disposed of and the City Clerk notified that the audits or proceedings have concluded. In the proposed amendment, the language refers to the termination of the legal defense committee, and is modeled on the new FPPC Regulation. That Regulation includes a provision permitting a local jurisdiction or the FPPC Executive Director to extend the termination date for good cause. In the event that a candidate or elected official has incurred substantial legal fees and needs additional time to retire the debt, an extension may be appropriate. (Note that any unpaid legal fees could be considered an unlawful gift to a candidate or elected official.) Accordingly, the Commission has proposed a corresponding provision in ECCO that would permit the Ethics Commission Executive Director to extend the termination date for good cause, and would also require the Executive Director to report to the Ethics Commission if he or she grants any such extensions.

#### *Telephone Communications*

The changes previously approved by the Rules Committee in June of 2008 include several amendments designed to bring the telephone communications provisions into conformance with recently-adopted state law. The Commission recently realized, however, that the new state law differs from ECCO in that state law regulates 500 or more advocacy calls "that are similar in nature," whereas ECCO currently regulates 500 or more advocacy calls made in connection with an election, regardless of whether the content is similar. State law clearly intends to capture only those campaign efforts involving calls of 500 or more that use substantially the same script for the call (either live or recorded). The Commission is concerned that incorporating this new rule into ECCO will result in the Commission staff (in an advisory capacity) and the Commissioners (in an enforcement capacity) being forced to evaluate the nuances of different scripts to determine if a reasonable person would believe that they are "similar in nature." The Commission believes that it would be more appropriate and effective to adopt a simpler bright-line law that will apply without the need for a case-by-case analysis. Accordingly, the Commission recommends amending the definition of "mass telephone communications" to incorporate ECCO's current standard (500 or more calls made in connection with an election).

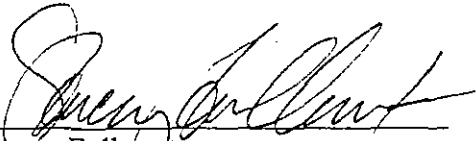
The Rules Committee previously approved changes that would expand the "mass telephone communications" definition to include more than just express advocacy calls, in order to require an identification disclosure on subtler "push poll" calls (note that disclosure may be made at the end of the call in order to avoid skewing the polling results). In order to clarify that the disclosure requirements would only apply to calls made for advocacy and polling purposes, and not to routine calls made to vendors, campaign staff, etc., the Commission recommends further amending the "mass telephone communications" definition to expressly state that it applies only to advocacy calls and polling calls.

For your convenience we have drafted the attached strike-out version reflecting proposed changes to the relevant portions of ECCO. We look forward to discussing these proposed

000281

The Committee on Rules, Open Government and Intergovernmental Relations  
August 20, 2008  
Page 5

changes with you at the Rules Committee meeting on September 3, 2008. If you have any questions, please contact me at your convenience.

A handwritten signature in black ink, appearing to read "Stacey Fulhorst", written over a horizontal line.

Stacey Fulhorst  
Executive Director

Enclosure

cc: Catherine Bradley, Chief Deputy City Attorney

000283 SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S  
**Election Campaign Control Ordinance**  
**(Third Pre-Election Statement)**

**PROPOSED AMENDMENTS**

Rev. June 19, 2008

**Proposed Effective Date: January 1, 2009**

**Chapter 2: Government**  
**Article 7: Elections, Campaign Finance and Lobbying**  
**Division 29: Election Campaign Control Ordinance**

**§27.2930 Base Level of Campaign Statements and Disclosures**

Each *candidate* and *committee* shall file campaign statements in the time and manner required by California Government Code sections 81000 et seq. and title 2 of the California Code of Regulations with the following additional requirements:

- (a) All *candidate* and *committee* campaign disclosure statements that are generated from the output of a computer software program shall be generated with the names of all contributors listed in alphabetical order by last name. *Treasurers* for any *committee* that files handwritten campaign disclosure statements shall make reasonable good faith efforts to list the names of all contributors in alphabetical order by last name.
- (b) A *general purpose recipient committee* attributing *contributions* pursuant to section 27.2936 totaling \$100 or more to the same individual for purposes of supporting or opposing a *candidate* in an *election* shall, within six months of the attribution, separately disclose such *contributions* on a campaign statement filed with the City Clerk by supplying all identifying information regarding the contributor, reporting the date of the attribution as the "date received," showing the amount attributed to the individual at that time, identifying the applicable *candidate* and *election* for which the attribution was made, and indicating that the *contribution* is being re-reported per San Diego Municipal Code section 27.2930.
- (c) A *general purpose recipient committee* that submits all of the information required by subsection (b) in a supplemental document attached to a campaign statement filed with the *City Clerk* will be deemed to have complied with the provisions of subsection (b).
- (d) Any payment made by a political party for *member communications* to its members who are registered with that party and that would otherwise qualify as a *contribution*

or *expenditure* shall be reported on that political party's campaign disclosure statement in a manner that identifies the payment as a "member communication."

deletion  
already  
approved by  
Commission

- (e) ~~Contributions shall be reported in a manner consistent with the provisions of title 2, section 18421.1 of the California Code of Regulations, except that a monetary contribution is deemed to have been made or received only after a candidate or committee obtains:~~

- (1) ~~possession or control of the check or other negotiable instrument by which the contribution is made, and~~
- (2) ~~possession of all of the information required by California Government Code section 84211.~~

Requires a third  
pre-election  
report just  
before the  
election

- (e) In addition to any other campaign statement required to be filed pursuant to the California Political Reform Act, every candidate, controlled committee, and committee primarily formed to support or oppose a candidate, shall file a pre-election statement on the Friday before any election in which the candidate is listed on the ballot. This statement shall have a closing date of the Thursday before the election and shall cover activity and payments occurring through that day.

- (f) When reporting *contributions* for regularly scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(P)" for all *contributions* that the contributor has designated for a primary *election*, and shall include the notation "(G)" for all *contributions* that the contributor has designated for a general *election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation "(P)" for all *contributions* the *candidate* or *committee* has allocated for the primary *election*, and shall include the notation "(G)" for all *contributions* the *candidate* or *committee* has allocated for the general *election*.
- (g) When reporting *contributions* for specially scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(S)" for all *contributions* that the contributor has designated for a special *election*, and shall include the notation "(R)" for all *contributions* that the contributor has designated for a special run-off *election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation "(S)" for all *contributions* the *candidate* or *committee* has allocated for the special *election*, and shall include the notation "(R)" for all *contributions* the *candidate* or *committee* has allocated for the special run-off *election*.
- (h) In conjunction with making the notations required by subsections (f) and (g), *candidates* and *committees* shall disclose the cumulative amount of *contributions* received from the contributor for each *election*.
- (i) *Sponsors* and *sponsored committees* participating in *City elections* are subject to the reporting obligations set forth in title 2, section 18419 of the California Code of Regulations.



000285 (1) It is unlawful to fail to comply with the disclosure requirements of California Government Code sections 81000 *et seq.*, the disclosure requirements of title 2 of the California Code of Regulations, and the additional requirements of this section.

SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S  
000287 Election Campaign Control Ordinance  
(Legal Defense Funds)

**PROPOSED AMENDMENTS**

Rev. August 18, 2008

**STRIKEOUT VERSION**

**Chapter 2: Government**

**Article 7: Elections, Campaign Finance and Lobbying**

**Division 29: San Diego Municipal Election Campaign Control Ordinance**

**§27.2903 Definitions**

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

....

newly  
defined  
term

Legal defense committee means a committee created and controlled by an elected City Official or candidate for the purpose of receiving and spending funds to defray the professional fees and costs incurred in the City Official's or candidate's response to an audit or the legal defense of one or more civil, criminal, or administrative proceedings.

....

Change in  
terminology

*Professional fees and costs* means expenses related to the retention of an attorney, treasurer, fundraiser, or any other *person* retained to perform services reasonably related to the purpose for which a legal defense fund legal defense committee is created.

....

**§27.2965 Legal Defense Fund Funds**

Separate  
committee  
instead of a  
fund w/in  
existing  
campaign  
committee.

- (a) Every elected *City Official* and every *candidate for elective City office* shall be permitted to establish and maintain one ~~legal defense fund~~ legal defense committee and one legal defense checking account for the purpose of soliciting, accepting, and spending legal defense funds.

000288

- (b) In addition to *contributions* received in connection with seeking an elective *City* office, any elected *City Official* or *candidate* for *elective City office* may receive legal defense fund contributions from individuals for a legal defense fund, and may use such *contributions* solely for the following purposes:

FTB performs audits of campaign committees

- (1) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* response to an audit of his or her campaign activity conducted by the City of San Diego Ethics Commission, or the California Fair Political Practices Commission, or the California Franchise Tax Board; or
- (2) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* legal defense to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the *City Official's* governmental activities and duties.

Annual limit based on the dollar amount of campaign contribution limit

- (c) It is unlawful for any individual to make, or for any elected *City Official* or *candidate* to solicit or accept from any individual, legal defense fund contributions totaling more than \$250 the dollar amount established by sections 27.2935(a) and 27.2937 during a single calendar year to a legal defense fund in connection with an audit or a civil, criminal, or administrative proceeding identified in a Statement of Purpose filed with the *City Clerk* pursuant to section 27.2966 the Statement of Organization required by section 27.2966(b).

- (d) An individual's *contributions* to a legal defense fund are not subject to legal defense committee do not count toward the campaign *contribution* limits set forth in sections section 27.2935, and are not subject to the time limits set forth in section 27.2938.

- (e) It is unlawful for any individual to make a *contribution* to a legal defense fund legal defense committee without accompanying the *contribution* with a disclosure form identifying the particulars of all matters, if any, that such individual has pending before the board, commission, department, or agency of which the *City Official* or *candidate* maintaining the legal defense fund legal defense committee is a member or employee. When filing the quarterly campaign statements required by section 29.2967, the *City Official* or *candidate* maintaining the legal defense fund legal defense committee shall attach to such statement a copy of each disclosure form received pursuant to this subsection.

- (f) Any legal defense fund established in accordance with sections 27.2965–27.2969 must be maintained through a controlled committee the *City Official* or *candidate* has organized to seek the office held or sought that is the subject of the civil, criminal, or administrative proceeding.

separate committee makes provisions unnecessary

- (1) It is unlawful for a controlled committee to accept a *contribution* for a legal defense fund unless it is accompanied by a written designation from the contributor indicating that the *contribution* is a *contribution* for the legal defense fund.

000289

Designation no longer needed; contributions go to separate committee

- (2) ~~Contributions~~ collected for a legal defense fund must be deposited in the ~~controlled committee's~~ campaign contribution checking account.
- (3) ~~Expenditures~~ from a legal defense fund must be made from the ~~controlled committee's~~ campaign contribution checking account.

Clarifies that only individuals can make LDF contribution

- (f) It is unlawful for a person other than an individual to make a contribution to a legal defense committee. It is unlawful for a City Official or candidate to solicit or accept a contribution for a legal defense committee from any person other than an individual.

May accept campaign funds for legal defense

- (g) ~~Except as set forth in subsection 27.2924(c)(6), sections 27.2965-27.2969 shall constitute the sole authority for soliciting or accepting contributions for the costs of responding to an audit or for the defense of an action relating to an election campaign, electoral process, or a City Official's conduct in office.~~

#### **§27.2966 Establishment of a Legal Defense Fund Committee and Checking Account; Recordkeeping**

Statement of Purpose replaced with FPPC Form 410 (Statement of Organization)

- (a) ~~Prior to soliciting or accepting any contributions for a legal defense fund, the City Official or candidate shall file with the City Clerk a "Statement of Purpose" identifying the specific audit or civil, criminal, or administrative proceeding for which the use of a legal defense fund is sought. A City Official or candidate seeking to establish or maintain a legal defense fund shall file a separate "Statement of Purpose" for each audit and each civil, criminal, or administrative proceeding for which the use of the legal defense fund is sought.~~

- (b) The legal defense fund shall be named: ~~"The (name of the City Official or candidate) Legal Defense Fund."~~

- (c) ~~Any controlled committee accepting contributions for a legal defense fund shall keep a ledger for each audit and for each civil, criminal, or administrative proceeding identified in a Statement of Purpose, detailing all of the legal defense fund's contributions and expenditures for each proceeding. Such ledgers shall be maintained separately from the controlled committee's accounting of contribution and expenditure activity unrelated to the legal defense fund.~~

Follows new state law with regard to establishment of, and record-keeping for, an LDF committee.

- (a) A City Official or candidate who raises legal defense funds shall deposit the funds in, and expend the funds from, a legal defense checking account that is separate from any other bank account held by the City Official or candidate. The checking account shall be established at an office of a bank or other financial institution providing checking account services located in the City of San Diego.
- (b) The City Official or candidate shall establish a legal defense committee for the legal defense checking account by filing a Statement of Organization with the Secretary of State and the City Clerk pursuant to California Government Code section 84101. The Statement of Organization shall contain a description of the specific audit or civil, criminal, or administrative proceeding or proceedings for which the legal

000290

defense committee is established, and shall be amended pursuant to Government Code section 84103 as audits or proceedings are either resolved or initiated. The words "Legal Defense Fund" and the City Official's or candidate's name shall be included in the name of the legal defense committee.

- (c) The City Official or candidate, and the treasurer of the legal defense committee, are subject to the recordkeeping requirements set forth in title 2, section 18401 of the California Code of Regulations, and shall keep separate detailed accounts, records, bills, and receipts for each audit and legal proceeding specified in the Statement of Organization filed pursuant to subsection (a), including documentation substantiating the basis for each expenditure made with legal defense funds.
- (d) The records required by section 27.2966(c) shall be kept by the City Official, candidate, or treasurer for a period of four years following the date that the campaign statement to which they relate is filed.

**§27.2967 Disclosure of Legal Defense Fund Activity Disclosures by Legal Defense Committee**

- (a) The ~~controlled committee~~ legal defense committee of any City Official or candidate who is a candidate in an upcoming City election shall disclose its legal defense fund activity on campaign statements filed in accordance with the schedule prescribed by the Political Reform Act for other candidate controlled committees in the City.
- (b) The ~~controlled committee~~ legal defense committee of any City Official or candidate who is not a candidate in an upcoming City election shall disclose its legal defense fund activity on campaign statements filed quarterly, as follows:

Maintain current reporting schedule (which is stricter than state law).

- (1) No later than April 30 for the period of January 1 through March 31.
- (2) No later than July 31 for the period of April 1 through June 30.
- (3) No later than October 31 for the period of July 1 through September 30.
- (4) No later than January 31 for the period of October 1 through December 31.

No longer needed because committee is separate

- (c) ~~The City Official's or candidate's controlled committee shall file separate summary pages and disclosure schedules for all contributions and expenditures made in connection with the legal defense fund, and shall clearly identify the name of the legal defense fund on all such summary pages and disclosure schedules.~~

**§27.2968 Impermissible Use of Legal Defense Fund Funds**

Maintain current prohibitions

- (a) It is unlawful for a City Official or candidate to use any portion of a legal defense fund funds in a legal defense checking account to pay a fine, sanction, or other type of penalty.

000291

- (b) It is unlawful for a *City Official* or *candidate* to transfer any portion of a legal defense fund funds in a legal defense checking account to any other *committee*.

**§27.2969 Conclusion of Audit or Proceeding; Termination of Legal Defense Fund Committee**

- (a) ~~Within six months after the conclusion of the audit or of any lawsuits or proceedings for which the legal defense fund was established or maintained, the *City Official* or *candidate* may dispose of any remaining funds in the legal defense fund as follows:~~

- (1) ~~by paying outstanding *professional fees and costs* incurred in the defense of any proceeding identified in the Statement of Purpose; or,~~
- (2) ~~by repaying the contributors on a "last in, first out" or "first in, first out" accounting basis; or,~~
- (3) ~~by making the funds payable to the City Treasurer for deposit in the General Fund of the City.~~

Giving money to General Fund not allowed under new state law.

- (b) ~~Within six months after the conclusion of all proceedings for which the legal defense fund was established, the *City Official* or *candidate* shall file with the *City Clerk* a "Legal Defense Fund Termination" statement declaring that the legal defense fund is no longer soliciting or accepting *contributions* for the legal defense fund, will not make further *expenditures* from the legal defense fund, and has properly disclosed all legal defense fund *contributions* and *expenditures*.~~

- (a) At the conclusion of an audit or legal proceeding identified in a *legal defense committee's* Statement of Organization, and after the payment of all *professional fees and costs* incurred in connection with that audit or proceeding, the *City Official* or *candidate* may use any remaining *contributions* collected for that audit or proceeding to pay outstanding *professional fees and costs* incurred in connection with any other audit or proceeding identified in the *legal defense committee's* Statement of Organization, so long as such *contributions*, when aggregated with all other *contributions* from the same contributor for the same audit or proceeding, do not exceed the *contribution* limits set forth in section 27.2965(c).

Leftover funds may be used for other LDF matters, but are subject to attribution & contribution limits.

- (b) Within six months after the conclusion of all audits and proceedings for which the *legal defense committee* was established, the *City Official* or *candidate* shall refund any remaining funds to contributors on a "last in, first out" or "first in, first out" accounting basis, close the legal defense checking account, and terminate the *legal defense committee* pursuant to title 2, section 18404(b) and (c) of the California Code of Regulations. The Ethics Commission's Executive Director may for good cause extend the termination date. An application to extend the termination date shall be in writing and shall include copies of all supporting documents including copies of any relevant billing statements. The Executive Director shall report to the Ethics Commission at its next regularly scheduled meeting, or as soon thereafter as practicable, any extensions granted pursuant to this section.

Leftover funds get returned to contributors; Executive Director may extend deadline for good cause, and must thereafter notify the Commission.

000293 SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S  
**Election Campaign Control Ordinance**  
**(Telephone Communications)**

**PROPOSED AMENDMENTS**

Rev. June 23, 2008

**Proposed Effective Date: January 1, 2009**

**Chapter 2: Government**

**Article 7: Elections, Campaign Finance and Lobbying**

**Division 29: Election Campaign Control Ordinance**

**§27.2903 Definitions**

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 et seq.) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

*Mass telephone communications* means live or recorded telephone calls to 500 or more individuals or households in connection with the same election for the purpose of (a) supporting or opposing a clearly identified candidate or a clearly identified measure; or (b) conducting a poll that mentions or refers to a clearly identified candidate or a clearly identified measure.

Revised  
definition

**§27.2971 Telephone Communications**

- (a) It is unlawful for any *candidate* or *committee* to engage or hire others to engage in *mass telephone communications* live or recorded telephone communications with 500 or more individuals or households for the purpose of supporting or opposing a City candidate or City measure unless the communications include a statement that the communications are "paid for by," "authorized by," or are otherwise being made "on behalf of" immediately followed by the name of each *candidate* or *committee* that is paying for any of the resources used for the communications or that is otherwise authorizing the communication. For purposes of this subsection, "resources" include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:

Changes  
already  
approved by  
Ethics  
Commission  
and Rules  
Committee

- (1) A call is "paid for by" a candidate or committee when the candidate or committee pays directly for the call or pays another person to make the call on its behalf.

000294

- (2) A call is "authorized by" a candidate or committee if a person pays for the call at the behest of the candidate or committee and that payment is a contribution to the candidate or committee.
- (3) Notwithstanding subsections (a)(1) and (a)(2), a call is made "on behalf of" a candidate or committee when it is made by a volunteer at the direction of the candidate or committee.
- (b) The statement required pursuant to subsection (a) shall be clearly audible and at the same general volume as the rest of the telephone message.
- (c) If the telephone communication is a recording, the statement required pursuant to subsection (a) shall be played at the same speed as the rest of the message.
- (d) If the telephone communication is paid for by a *controlled committee*, the name of the *candidate* controlling the *committee* shall be included in addition to the information required by subsection (a).
- (e) Any *candidate* or *committee* paying for a live or recorded telephone communication subject to this section shall maintain for four years a transcript of the message being communicated, a copy of any recorded messages, and a record of the number of calls for each message.
- (f) The disclosure requirements set forth in this section shall not apply to:
- (1) ~~a candidate personally engaging in a live telephone communication, or~~
- (2) ~~member communications made by an organization that is not a political party.~~

RECEIVED  
08 SEP 26 AM 11:54  
CITY CLERKS OFFICE  
SAN DIEGO, CA



000295

CITY OF SAN DIEGO  
ETHICS COMMISSION

MEMORANDUM

7  
**DATE:** September 2, 2008  
**TO:** Elyse Lowe, Rules Committee Consultant  
**FROM:** Stephen Ross, Program Manager  
**SUBJECT:** Updated Documents for September 3, 2008, Rules Committee Meeting  
(Item 3: Election Campaign Control Ordinance)

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Attached is an updated version (dated August 29, 2008) of the Ethics Commission's proposed changes to the City's Election Campaign Control Ordinance (Legal Defense Fund) provisions. This updated version contains non-substantive changes recommended by the City Attorney's Office. Please substitute this version for the one we submitted previously (dated August 18, 2008).

If you have any questions, please contact me at your convenience at (619) 533-3476.

000297 SAN DIEGO ETHICS COMMISSION REVIEW OF THE CITY'S  
**Election Campaign Control Ordinance  
(Legal Defense Funds)**

**PROPOSED AMENDMENTS**

Rev. August 29, 2008

**STRIKEOUT VERSION**

**Chapter 2: Government**

**Article 7: Elections, Campaign Finance and Lobbying**

**Division 29: San Diego Municipal Election Campaign Control Ordinance**

**§27.2903 Definitions**

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

....

newly  
defined  
term

Legal defense committee means a committee created and controlled by an elected City Official or candidate for the purpose of soliciting, accepting, and spending funds to defray the professional fees and costs incurred in the City Official's or candidate's response to an audit or the legal defense of one or more civil, criminal, or administrative proceedings.

....

Change in  
terminology

*Professional fees and costs* means expenses related to the retention of an attorney, treasurer, fundraiser, or any other *person* retained to perform services reasonably related to the purpose for which a ~~legal defense fund~~ legal defense committee is created.

....

**§27.2965 Legal Defense Fund Funds**

Separate  
committee  
instead of a  
fund w/in  
existing  
campaign  
committee.

- (a) Every elected *City Official* and every *candidate* for *elective City office* shall be permitted to establish and maintain one ~~legal defense fund~~ legal defense committee and one legal defense checking account for the purpose of soliciting, accepting, and spending legal defense funds.

000298(b)

In addition to *contributions* received in connection with seeking an elective *City* office, any elected *City Official* or *candidate* for *elective City office* may receive legal defense fund contributions from individuals for a legal defense fund, and may use such *contributions* solely for the following purposes:

FTB performs audits of campaign committees

(1) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* response to an audit of his or her campaign activity conducted by the City of San Diego Ethics Commission, ~~or the California Fair Political Practices Commission, or the California Franchise Tax Board;~~ or

(2) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* legal defense to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the *City Official's* governmental activities and duties.

Annual limit based on the dollar amount of campaign contribution limit

(c) It is unlawful for any individual to make, or ~~for any elected~~ *City Official* or *candidate* to solicit or accept from any individual, legal defense fund contributions totaling more than \$250 the dollar amount established by sections 27.2935(a) and 27.2937 during a single calendar year to a legal defense fund in connection with an audit or a civil, criminal, or administrative proceeding identified in a ~~Statement of Purpose~~ filed with the *City Clerk* pursuant to section 27.2966 the Statement of Organization required by section 27.2966(b).

(d) An individual's *contributions* to a legal defense fund ~~are not subject to~~ legal defense committee do not count toward the campaign *contribution* limits set forth in sections section 27.2935, and are not subject to the time limits set forth in section 27.2938.

(e) It is unlawful for any individual to make a *contribution* to a legal defense fund ~~legal defense committee~~ without accompanying the *contribution* with a disclosure form identifying the particulars of all matters, if any, that such individual has pending before the board, commission, department, or agency of which the *City Official* or *candidate* maintaining the legal defense fund legal defense committee is a member or employee. When filing the quarterly campaign statements required by section 29.2967, the *City Official* or *candidate* maintaining the legal defense fund legal defense committee shall attach to such statement a copy of each disclosure form received pursuant to this subsection.

separate committee makes provisions unnecessary

(f) Any legal defense fund established in accordance with sections 27.2965–27.2969 ~~must be maintained through a controlled committee the City Official or candidate has organized to seek the office held or sought that is the subject of the civil, criminal, or administrative proceeding.~~

(1) ~~It is unlawful for a controlled committee to accept a contribution for a legal defense fund unless it is accompanied by a written designation from the~~

000299

contributor indicating that the ~~contribution~~ is a ~~contribution~~ for the legal defense fund.

Designation no longer needed; contributions go to separate committee

- (2) ~~Contributions~~ collected for a legal defense fund must be deposited in the ~~controlled committee's~~ campaign contribution checking account.
- (3) ~~Expenditures~~ from a legal defense fund must be made from the ~~controlled committee's~~ campaign contribution checking account.

Clarifies that only individuals can make LDF contribution

- (f) It is unlawful for a person other than an individual to make a contribution to a legal defense committee. It is unlawful for a City Official or candidate to solicit or accept a contribution for a legal defense committee from any person other than an individual.

May accept campaign funds for legal defense

- (g) ~~Except as set forth in subsection 27.2924(e)(6), sections 27.2965-27.2969 shall constitute the sole authority for soliciting or accepting contributions for the costs of responding to an audit or for the defense of an action relating to an election campaign, electoral process, or a City Official's conduct in office.~~

#### **§27.2966 Establishment of a Legal Defense Fund Committee and Checking Account; Recordkeeping**

Statement of Purpose replaced with FPPC Form 410 (Statement of Organization)

- (a) ~~Prior to soliciting or accepting any contributions for a legal defense fund, the City Official or candidate shall file with the City Clerk a "Statement of Purpose" identifying the specific audit or civil, criminal, or administrative proceeding for which the use of a legal defense fund is sought. A City Official or candidate seeking to establish or maintain a legal defense fund shall file a separate "Statement of Purpose" for each audit and each civil, criminal, or administrative proceeding for which the use of the legal defense fund is sought.~~

- (b) ~~The legal defense fund shall be named: "The (name of the City Official or candidate) Legal Defense Fund."~~

- (c) ~~Any controlled committee accepting contributions for a legal defense fund shall keep a ledger for each audit and for each civil, criminal, or administrative proceeding identified in a Statement of Purpose, detailing all of the legal defense fund's contributions and expenditures for each proceeding. Such ledgers shall be maintained separately from the controlled committee's accounting of contribution and expenditure activity unrelated to the legal defense fund.~~

Follows new state law with regard to establishment of, and record-keeping for, an LDF committee.

- (a) A City Official or candidate who raises legal defense funds shall deposit the funds in, and expend the funds from, a legal defense checking account that is separate from any other bank account held by the City Official or candidate. The checking account shall be established at an office of a bank or other financial institution providing checking account services located in the City of San Diego.
- (b) The City Official or candidate shall establish a legal defense committee for the legal defense checking account by filing a Statement of Organization with the Secretary of State and the City Clerk pursuant to California Government Code section 84101.

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The Statement of Organization shall contain a description of the specific audit or civil, criminal, or administrative proceeding or proceedings for which the legal defense committee is established, and shall be amended pursuant to Government Code section 84103 as audits or proceedings are either resolved or initiated. The words "Legal Defense Fund" and the City Official's or candidate's name shall be included in the name of the legal defense committee.

- (c) The City Official or candidate, and the treasurer of the legal defense committee, are subject to the recordkeeping requirements set forth in title 2, section 18401 of the California Code of Regulations, and shall keep separate detailed accounts, records, bills, and receipts for each audit and legal proceeding specified in the Statement of Organization filed pursuant to subsection (a), including documentation substantiating the basis for each expenditure made with legal defense funds.
- (d) The records required by section 27.2966(c) shall be kept by the City Official, candidate, or treasurer for a period of four years following the date that the campaign statement to which they relate is filed.

**§27.2967 Disclosure of Legal Defense Fund Activity Disclosures by Legal Defense Committee**

- (a) The ~~controlled committee~~ legal defense committee of any City Official or candidate who is a candidate in an upcoming City election shall disclose its legal defense fund activity on campaign statements filed in accordance with the schedule prescribed by the Political Reform Act for other candidate controlled committees in the City.
- (b) The ~~controlled committee~~ legal defense committee of any City Official or candidate who is not a candidate in an upcoming City election shall disclose its legal defense fund activity on campaign statements filed quarterly, as follows:

Maintain current reporting schedule (which is stricter than state law).

- (1) No later than April 30 for the period of January 1 through March 31.
- (2) No later than July 31 for the period of April 1 through June 30.
- (3) No later than October 31 for the period of July 1 through September 30.
- (4) No later than January 31 for the period of October 1 through December 31.

No longer needed because committee is separate

- (c) ~~The City Official's or candidate's controlled committee shall file separate summary pages and disclosure schedules for all contributions and expenditures made in connection with the legal defense fund, and shall clearly identify the name of the legal defense fund on all such summary pages and disclosure schedules.~~

**§27.2968 Impermissible Use of Legal Defense Fund Funds**

Maintain current prohibitions

- (a) It is unlawful for a City Official or candidate to use any portion of a legal defense fund funds in a legal defense checking account to pay a fine, sanction, or other type of penalty.

000301

- (b) It is unlawful for a *City Official* or *candidate* to transfer any portion of a legal defense fund funds in a legal defense checking account to any other *committee*.

**§27.2969 Conclusion of Audit or Proceeding; Termination of Legal Defense Fund Committee**

- (a) ~~Within six months after the conclusion of the audit or of any lawsuits or proceedings for which the legal defense fund was established or maintained, the *City Official* or *candidate* may dispose of any remaining funds in the legal defense fund as follows:~~

- (1) ~~by paying outstanding *professional fees and costs* incurred in the defense of any proceeding identified in the Statement of Purpose; or,~~
- (2) ~~by repaying the contributors on a "last in, first out" or "first in, first out" accounting basis; or,~~
- (3) ~~by making the funds payable to the City Treasurer for deposit in the General Fund of the *City*.~~

Giving money to General Fund not allowed under new state law.

- (b) ~~Within six months after the conclusion of all proceedings for which the legal defense fund was established, the *City Official* or *candidate* shall file with the *City Clerk* a "Legal Defense Fund Termination" statement declaring that the legal defense fund is no longer soliciting or accepting *contributions* for the legal defense fund, will not make further *expenditures* from the legal defense fund, and has properly disclosed all legal defense fund *contributions* and *expenditures*.~~

- (a) At the conclusion of an audit or legal proceeding identified in a *legal defense committee's* Statement of Organization, and after the payment of all *professional fees and costs* incurred in connection with that audit or proceeding, the *City Official* or *candidate* may use any remaining *contributions* collected for that audit or proceeding to pay outstanding *professional fees and costs* incurred in connection with any other audit or proceeding identified in the *legal defense committee's* Statement of Organization, so long as such *contributions*, when aggregated with all other *contributions* from the same contributor for the same audit or proceeding, do not exceed the *contribution limits* set forth in section 27.2965(c).

Leftover funds may be used for other LDF matters, but are subject to attribution & contribution limits.

- (b) Within six months after the conclusion of all audits and proceedings for which the *legal defense committee* was established, the *City Official* or *candidate* shall refund any remaining funds to contributors on a "last in, first out" or "first in, first out" accounting basis, close the legal defense checking account, and terminate the *legal defense committee* pursuant to title 2, section 18404(b) and (c) of the California Code of Regulations. The Ethics Commission's Executive Director may for good cause extend the termination date. An application to extend the termination date shall be in writing and shall include copies of all supporting documents including copies of any relevant billing statements. The Executive Director shall report to the Ethics Commission at its next regularly scheduled meeting, or as soon thereafter as practicable, any extensions granted pursuant to this section.

Leftover funds get returned to contributors; Executive Director may extend deadline for good cause, and must thereafter notify the Commission.

**CITY OF SAN DIEGO  
ETHICS COMMISSION**

**Office of the Executive Director**

**M E M O R A N D U M**

**DATE:** September 12, 2008

**TO:** Council President and Members of the City Council

**FROM:** Guillermo Cabrera, Chair, San Diego Ethics Commission  
Stacey Fulhorst, Executive Director, San Diego Ethics Commission

**SUBJECT:** Proposed Amendments to the Election Campaign Control Ordinance [ECCO] and Municipal Lobbying Ordinance (San Diego Municipal Code sections 27.2901, et seq. and 27.4002)

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One of the responsibilities of the Ethics Commission, as set forth in SDMC section 26.0414(g), is to "undertake a review of the City's existing governmental ethics laws, and to propose updates to those laws to the City Council for its approval." In 2003 and 2004, the Commission completed an extensive review and overhaul of the City's campaign laws. The proposed changes were adopted by the City Council and went into effect on January 5, 2005.

Since that time, the Commission has received input from City candidates and campaign professionals regarding various aspects of ECCO, including an ongoing concern that the City's contribution limits are too low and should be increased. Accordingly, as part of its legislative calendars for 2007 and 2008, the Commission held a series of public workshops to address the issue of contribution limits and several related provisions. After extensive deliberation and consideration of various proposals, the Commission unanimously approved a package of proposed amendments that are discussed in detail below.

The Commission presented its proposed changes to the City Council Committee on Rules, Open Government and Intergovernmental Relations on June 11, 2008, at which time the Committee voted to approve and forward to the full City Council the Commission's entire package of proposed amendments with one exception. The proposed amendment to increase campaign contribution limits was forwarded to the full City Council for further debate because the Committee was unable to reach a consensus regarding the specific amount to which limits should be increased.

**PROPOSED AMENDMENTS**

**Contribution Limits (SDMC §§ 27.2935, 27.2936 & 27.2937):**

Proposed changes: The Ethics Commission recommends increasing contribution limits to \$1,000 for both district and citywide candidates. The Commission also recommends maintaining the

000304

current biennial indexing factor but modifying the indexing provision so that adjustments will be rounded to the nearest \$50 (currently adjustments are rounded to the nearest \$10).

Rationale: During the series of public workshops on ECCO, the Commission heard a great deal of testimony concerning the City's contribution limits. The main issue before the Commission was how best to balance the City's interest in reducing the potentially corrupting impact of giving money to a candidate against a candidate's ability to amass the resources necessary for effective campaign advocacy. Contribution limits that are too high can result in corruption or the appearance of corruption. On the other hand, contribution limits that are too low can harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, and may not survive First Amendment scrutiny. Ultimately, the following factors led the Commission to conclude that the current limits are too low:

- The City's contribution limits were initially set at \$250 per election in 1973, when ECCO was first adopted by the City Council. In January of 2005, the contribution limit for candidates running in citywide races (Mayor and City Attorney) was increased to \$300, while the limit for candidates running in district races remained \$250. In addition, in January of 2005, a biennial indexing factor was incorporated into ECCO which resulted in adjustments to the contribution limits in March of 2007 to \$270 for district races and \$320 for citywide races.
- The costs associated with running for elective office (postage, printing, and media advertising) have increased substantially since 1973, and the contribution limits have not kept pace with increased costs. For example, the cost of postage in 1973 was \$.08, compared to \$0.42 today.
- If the original \$250 contribution limit were indexed for inflation in accordance with the Consumer Price Index, the limit in 2008 would be approximately \$1,200.
- Current contribution limits arguably prevent candidates from raising enough money to effectively communicate with voters. The current limits have an especially adverse impact on challengers because incumbents typically have an easier time raising money from a large group of individuals by virtue of their officeholder status.
- Current contribution limits, coupled with time limits on fundraising (12 months before an election and 180 days after an election), typically require candidates to spend a substantial amount of time fundraising, which comes at the expense of communicating with voters. For incumbents, the time spent raising funds takes away from time spent on official duties.
- State and local campaign laws include regulations designed to ensure transparency and provide the public with relevant information concerning contributions and expenditures in a timely manner. In order to ensure compliance with these regulations, candidates typically hope to retain experienced campaign professionals. Low limits on contributions, however, can result in insufficient funds to hire experienced professionals. Without experienced professionals, candidates reportedly find it more difficult to comply with ECCO.



- The City's current limits have the unintended consequence of encouraging City candidates to align themselves with various special interest groups and political parties because these groups have the means to support them financially via independent expenditures and member communications. Candidates maintain that they would prefer to raise their own campaign funds from individual supporters and control the advertising associated with their campaigns.

After the Commission determined that the current limits should be increased, it engaged in extensive discussions and deliberations before deciding to recommend a new limit of \$1,000 for both district and citywide races. The following factors contributed to this decision:

- Candidates for federal elective office are currently limited to \$2,300 per election, and candidates for the state legislature are limited to \$3,600 per election.
- Contribution limits for candidates for local elective office in the fifteen largest cities in the United States generally range from \$500 to \$5,000, with limits in Los Angeles of \$500 (district) / \$1,000 (citywide), and limits in San Francisco of \$500 (district & citywide).
- Because increasing contribution limits could have the effect of disenfranchising smaller contributors, the Commission considered the fact that a contributor making a \$50 contribution each month would still be able to contribute a total of \$900 in the 18 months leading up to a general election.
- Although indexing the original \$250 for inflation would result in a \$1,200 limit today, the Commission heard testimony indicating that the original \$250 limit was based in large part on a political compromise rather than a calculated study.
- Because candidates for citywide races generally have a larger pool of potential contributors, the Commission did not see a compelling need to recommend higher contribution limits for citywide candidates.

As discussed above, the Rules Committee generally agreed that the City's contributions should be increased, but decided to forward the proposal to the full City Council for additional discussion regarding the specific amount of the increase.

**Additional Filing Requirement (SDMC § 27.2930):**

Proposed changes: The Commission recommends amendments to ECCO that would require City candidates to file a third pre-election campaign statement on the Friday before a Tuesday election, covering the period through the Thursday before the election.

Rationale: In accordance with the filing schedule outlined in state law, local candidates must file several "pre-election statements" in the months leading up to a City election. Specifically, for this year's June 3rd election, candidates had to file a statement by March 24, covering the period ending March 17, and another statement by May 22, covering the period ending 17 days before the election. Their next campaign statements were not due until July 31, well after the election,

and covered the period from the last statement through June 30. In other words, information regarding contributions received and expenditures made during the last 16 days before the election is not disclosed to the public until approximately two months after the election. State law includes a similar time table for filings required in advance of a November election.

The Commission has received suggestions that City candidates should be required to disclose all campaign activities within twenty-four hours. Twenty-four hour filings could be extremely burdensome for candidates and their treasurers. In the heat of a campaign, it can be difficult for candidates and treasurers to gather information regarding the contributions that have been accepted by agents of the committee on a given day. To require them to do this every day would be especially onerous. Moreover, because ECCO requires candidates to obtain contributor information before depositing a contribution, and because a contribution must be disclosed as received even if it has not yet been deposited, a twenty-four hour filing requirement would likely necessitate frequent amendments of their campaign statements.

In light of the difficulties that would accompany twenty-four hour reporting, the Commission recommends adding one more pre-election filing in order to provide the public with additional information before election day. Put another way, requiring one additional campaign statement would strike the appropriate balance between a desire for extra transparency and the interest in minimizing the burdens placed on campaign committees. It is relevant to note that the City of Los Angeles currently imposes a similar additional filing requirement on its City candidates, and the Los Angeles Ethics Commission staff reports that it has not encountered any difficulties with compliance.

**Restrictions on Time Periods of Contributions (SDMC § 27.2938):**

Proposed changes: The Ethics Commission recommends adding an exemption to the 180-day post-election fundraising time limit for contributions from a candidate to his or her committee.

Rationale: ECCO currently prohibits City candidates from accepting contributions more than 180 days after a City election. When the Commission proposed this time limit in 2004, it expressed its interest in reducing the amount of time that an elected official engages in fundraising while contemporaneously conducting business as a City Official. The Commission noted that most post-election contributors are individuals who have business before the City, and the act of making a contribution long after a City election suggests an interest in obtaining special consideration from an elected official.

Since the time that this law took effect in January of 2005, the Commission staff has realized, through the course of its audit and enforcement activities, that the language of the statute prohibits the acceptance of all contributions more than 180 days after an election, including the personal funds that candidates may wish to deposit into their committees after the 180-day period expires. (ECCO requires candidates to deposit their personal funds into their committee bank accounts before spending their own money on their campaigns.) Accordingly, a candidate who has no leftover campaign funds arguably has no legal means to pay a campaign debt if he or she receives a new invoice or discovers an outstanding campaign debt more than 180-days after an election. Such a candidate also has no means of paying for recurring administrative expenses (e.g., treasurer and software fees associated with post-election filings) incurred more than 180

days after an election. Because the underlying intent of the prohibition was to prevent City candidates from accepting contributions from third parties long after a City election, the Commission recommends amending the current language to exempt a candidate's own contributions to his or her committee.

**Professional Expense Funds (SDMC §§ 27.2965 through 27.2969):**

Proposed changes: The Ethics Commission recommends a series of changes to the provisions in ECCO that address legal defense funds in order to recognize recent change in state law that permits local candidates to create separate committees and accounts for legal defense fund purposes. The amendments proposed by the Commission are also designed to ensure that the provisions of local law comply with the requirements set forth in the new state law and accompanying FPPC Regulation.

In accordance with direction from the Rules Committee, the term "legal defense fund" has been changed to "professional expense fund" wherever appropriate in ECCO. It should be noted, however, that recently adopted FPPC Regulation 18530.45 requires that the name of the committee listed on the Statement of Organization (which must be filed with the Secretary of State and the City Clerk) include the words "legal defense fund." Thus, although the proposed revisions to ECCO incorporate the terms "professional expense fund" and "professional expense committee," the revisions also reflect that the formal name of the committee must include the words "legal defense fund" in order to comply with state law.

In addition to the foregoing, the Commission is proposing the following policy modifications associated with professional expense funds: increase the annual contribution limits for these funds to mirror the per-election limit for City candidate elections, eliminate the provision that requires City candidates to create a new fund in order to raise money for legal defense fund purposes, and add a new provision permitting the granting of an extension to the six-month termination clause.

Rationale: During the 2007 state legislative season, the City of San Diego sponsored Assembly Bill 1441. This bill was ultimately approved and signed by the Governor in October of 2007. It amended state law to provide that local candidates may establish and maintain separate committees and bank accounts for legal defense purposes. Prior to the passage of this law, local candidates were required to maintain legal defense funds within an existing campaign committee, which effectively required them to co-mingle legal defense and campaign funds.

After the law was approved, the FPPC adopted corresponding Regulation 18530.45, which delineated various rules associated with local legal defense funds. This Regulation requires our local legal defense (or "professional expense") fund laws to be at least as strict as the state's laws in three specific areas: the establishment of the committee, recordkeeping requirements, and reporting obligations. The proposed changes to ECCO meet these standards, and in fact closely follow the state's guidelines. In all other areas, the FPPC Regulation expressly permits the City to tailor its legal defense provisions in the manner it deems most appropriate. Thus, the proposed amendments to the City's legal defense laws largely keep intact most of the framework that currently exists in ECCO. Many of the proposed changes simply reflect the fact that legal

000308

defense funds no longer must be subsumed within an existing campaign committee. In other words, the proposed amendments recognize the ability of a candidate or elected official to create a new and distinct "professional expense committee" that can collect and spend contributions through its own separate and distinct "professional expense" checking account.

In addition to the foregoing, the Commission has proposed several policy modifications that are based on the following:

- The City's current legal defense fund provisions allow a contributor to give a candidate or officeholder up to \$250 per year per audit or legal proceeding, over and above what the contributor may give for campaign purposes. The Commission proposes to raise the "professional expense fund" contribution limit to \$1,000 per calendar year. In addition, the Commission proposes that the limit be tied to the same dollar amount that exists for campaign contributions (currently, there is no connection between the two limits). This would be accomplished by setting the limit so that it is always equal to the campaign contribution limit (which is indexed every two years in accordance with changes to the Consumer Price Index). In other words, whenever campaign contribution limits are increased through indexing, the contribution limit for professional expense funds would automatically be increased to the same amount.
- ECCO currently states that the creation of a legal defense fund is the only means by which a candidate or elected official may solicit and accept contributions to pay for the costs of responding to an audit or enforcement action. In other words, under current law, candidates and elected officials are not permitted to solicit or accept new campaign contributions for legal defense purposes without first establishing a "legal defense fund" to accept those contributions. (They are, however, permitted to use existing campaign funds for legal defense purposes in accordance with the guidelines in state law.) This provision prevents candidates and officials from collecting new contributions for their legal defense without first publicizing the fact that they are the subject of an Ethics Commission investigation (because they are required to provide a description of the action when they establish the legal defense fund). Thus, if a need for legal defense funds occurs in the midst of an election, it forces the candidate to decide between giving opponents potentially damaging information, or foregoing the ability to collect new legal defense fund contributions to pay legal expenses. There is arguably no harm to anyone but the candidates if they are allowed to solicit and use new campaign contributions to pay for legal bills, since they would essentially be using campaign funds that could be used for purposes of campaign advocacy on attorney's fees. Accordingly, the Commission recommends deleting the exclusivity provision.
- Both the current and proposed legal defense fund (now referred to as "professional expense fund") laws state that within six months of the conclusion of all audits and proceedings for which legal defense funds were collected, all leftover funds must be disposed of and the City Clerk notified that the audits or proceedings have concluded. In the proposed amendment, the language refers to the termination of the professional expense committee, and is modeled on the new FPPC Regulation. That Regulation includes a provision permitting a local jurisdiction or the FPPC Executive Director to

000308 extend the termination date for good cause. In the event that a candidate or elected official has incurred substantial legal fees and needs additional time to retire the debt, an extension may be appropriate. (Note that any unpaid legal fees could be considered an unlawful gift to a candidate or elected official.) Accordingly, the Commission has proposed a corresponding provision in ECCO that would permit the Ethics Commission Executive Director to extend the termination date for good cause, and would also require the Executive Director to report to the Ethics Commission if he or she grants any such extensions.

**Telephone Communications (SDMC § 27.2971):**

Proposed changes: In order to conform to recent changes in state law, the Ethics Commission proposes amending this provision to require a “paid for by” disclosure in lieu of the current “on behalf of” disclosure when the call or caller is paid by a candidate or committee. In addition, the Commission proposes expanding the identification requirement from calls made for the purpose of expressly supporting or opposing a City candidate or measure, to also include calls made by candidates and committees for polling purposes.

Rationale: When ECCO was amended in 2004, a provision was added that required the inclusion of a “paid for by” disclosure in telephone communications directed to 500 or more individuals or households per election. This law was subsequently revised in late 2005 to require an “on behalf of” disclosure instead of the “paid for by” disclosure. The revision was prompted by concerns over the misleading appearance created when the “paid for by” disclosure was made by campaign volunteers.

In 2007, the State of California adopted new laws concerning identification requirements for telephone calls. This state law applies to all candidates and committees in California. It requires the inclusion of a “paid for by” disclosure when a candidate or committee pays for the call or pays another person to make the call on its behalf. Because it is not permissible for local campaign laws to be less restrictive than state law, it is necessary to amend ECCO to require a “paid for by” disclosure in situations in which the candidate or committee pays for the call (without using volunteers to make the call). The new state law also includes an “authorized by” disclosure requirement when a person has paid for a call at the behest of a candidate or committee. For purposes of consistency, the proposed amendments to ECCO also include this requirement.

The proposed amendments would maintain ECCO’s current requirement that volunteers make an “on behalf of” disclosure when a candidate or committee is paying for the resources used to make the calls. Although the new state law does not include any identification requirements for calls made by volunteers, the Commission believes that it is important for volunteers to identify the candidate or committee directing their efforts. In addition to satisfying the public’s interest in knowing who is paying for the resources used to make the call, a volunteer’s “on behalf of” disclosure will eliminate any ambiguity in the mind of the person receiving the call – under the state model a person receiving a campaign call from a volunteer will not be able to tell if the caller is truly a volunteer or is instead a paid caller failing to abide by the disclosure requirement. By requiring a volunteer to make an identifying disclosure when the resources used to make the

000310

call are paid for by a candidate or committee, the proposed amendment to ECCO will provide the public with relevant information whenever these kinds of telephone calls are made.

Finally, the Commission staff has obtained advice from the Fair Political Practices Commission [FPPC] indicating that member communications are not exempt from the state's identification requirements for telephone calls. Accordingly, the amendments proposed by the Commission would delete the existing exemption for member communications by non-political parties.

In addition to the above proposed amendments that are necessary to harmonize local law with state law, the Commission also recommends revising ECCO to address "push polls" (a series of questions in a polling format that are designed to influence someone to vote for or against a particular candidate or measure). Because the current identification laws only apply to calls made expressly "for the purpose of supporting or opposing a City candidate or City measure," calls made for the purpose of conducting a true poll are not affected by the law. The Commission has learned, however, that some candidates and committees have attempted to avoid the identification requirement by claiming that their telephone communications were made for polling purposes, when in fact their polling questions suggest that the real purpose for the calls is to subtly advocate for or against City candidates.

In order to ensure that call recipients receive information regarding the caller, and in order to avoid situations that would require the Commission to evaluate the subtle nuances in particular poll questions to determine whether a reasonable person would conclude that the poll was a true poll or a push poll, the Commission recommends expanding the identification requirement to telephone communications made for polling purposes.

It is relevant to note that the identification requirement would only apply to calls made to 500 or more individual households by a City candidate or a political committee. If, for example, a newspaper or local television station wanted to pay for a true poll, it would not be subject to the above disclosure requirements; these entities are not political "committees." It is also relevant to note that the current and proposed laws do not specify the placement of the disclosure within the communication. In other words, a person conducting a true poll can make the required disclosure at the end of the call to avoid skewing the poll results.

**Housekeeping Amendments (SDMC §§ 27.2903, 27.2911, 27.2916, 27.2917, 27.2924, 27.2925, 27.2930, 27.2939, 27.2945 & 27.2960):**

The amendments proposed by the Ethics Commission include the following housekeeping changes and updates:

1. Proposed change: Modify the definition of "committee" to expressly include independent expenditure committees, and add a definition of independent expenditure committee.

Rationale: Clarifies that ECCO applies to non-recipient committees that make independent expenditures in support of or in opposition to a City candidate or measure.

000311

2. Proposed change: Clarify that the duty to have a campaign treasurer, and the rules regarding authorization by the treasurer, apply only to candidates and “recipient” committees.

Rationale: Clarifies that a committee that does not receive contributions from others, but makes independent expenditures in support of a City candidate or measure, is not required to have a campaign treasurer.

3. Proposed change: Incorporate a reference to FPPC Regulation 18401, which sets forth a detailed list of the information that must be obtained by a committee before depositing contributions.

Rationale: Incorporating the relevant FPPC Regulation ensures that local laws concerning contributor information are consistent with state requirements.

4. Proposed change: Delete the current requirement that contributor information that has not been provided must be requested in writing within ten business days.

Rationale: The current requirement that missing contributor information must be requested in writing does not reflect the current practices of most candidates and committees (most request the information via telephone or email). Moreover, because local law requires candidates and committees to deposit contributions within thirty business days or return them within thirty-five business days, and because contributor information must be obtained before a contribution is deposited, the Commission does not believe there is a sufficient reason to impose a ten-day time limit on obtaining relevant contributor information.

5. Proposed change: Clarify that the lawful use of campaign funds is governed by the entire California Political Reform Act [PRA], as opposed to specific sections.

Rationale: Incorporating the PRA ensures that any and all updates to state law concerning the permissible uses of campaign funds will be automatically incorporated by reference into ECCO.

6. Proposed change: In the provision regarding acceptable uses of surplus funds, clarify that only “vendor” debts (as opposed to candidate loans) must be paid within 180 days.

Rationale: This change will harmonize the surplus funds regulations with the vendor debt laws, which regulate the payment of vendor debts as opposed to candidate loans.

7. Proposed change: Delete existing rules regarding recordkeeping and incorporate FPPC Regulation 18401 by reference.

Rationale: The recordkeeping requirements set forth in FPPC Regulation 18401 are more thorough, are updated on a fairly regular basis, and better reflect current campaign practices. In addition, by incorporating the state’s recordkeeping laws, local candidates and campaign professionals will be able to rely on one set of rules.

8. Proposed change: Eliminate a current provision indicating that a contribution is only deemed to be "accepted" for purposes of disclosure when a candidate or committee has obtained all of the requisite contributor information.

Rationale: Because ECCO requires candidates and committees to obtain contributor information before a contribution is deposited, campaign treasurers previously expressed concern that they might be required to disclose a contribution received at the end of a reporting period even though they had not yet obtained the contributor's information, and that a campaign statement that did not include contributor information might result in an enforcement action by the Ethics Commission. As a result, ECCO currently states that contributions are not deemed to be "received" until the contributor information is obtained. This provision, however, is impermissibly less restrictive than state law, which states that a contribution is deemed to be "received" whenever the candidate or an agent of the candidate's committee takes possession of the contribution. This necessary amendment to ECCO will require candidates and committees to report contributions received near the end of a reporting period, even if all contributor information has not yet been obtained. Once the information is obtained (within thirty business days as discussed above) the candidate or committee will be required to file an amended campaign statement reflecting the contributor information.

9. Proposed change: Incorporate FPPC Regulation 18531.2, which sets forth guidelines regarding the return of general election contributions and the apportionment of expenditures between the primary and general elections.

Rationale: When a candidate raises money for a general election, but does not participate in that election (i.e., withdraws from the race; wins outright in the primary; or does not make it to the run-off), that candidate is required to refund general election contributions to individual contributors on a pro rata basis, minus expenses associated with raising and administering general election contributions. The FPPC recently adopted a Regulation that provides guidance for state candidates with regard to refunding general election contributions and determining how primary and general election costs should be apportioned. This amendment will impose on local candidates the same refund and apportionment rules contained in the FPPC Regulation.

10. Proposed change: Amend the provision requiring contribution solicitations to include a reimbursement prohibition notice to clarify that a violation may only be cured if remedial action specified is taken before the date of the applicable election.

Rationale: ECCO requires candidates and committees to include on their campaign contribution solicitations a notice that reimbursements by organizations are prohibited. This provision contains a built-in cure for violations whereby the candidate or committee may distribute the notice to all solicited individuals and notify the Ethics Commission that remedial action has taken place. This built-in remedy only serves its intended purpose if it occurs before the applicable election.

11. Proposed change: Clarify that the laws regulating the extensions of vendor credit apply only to candidates and candidate-controlled committees.



000313

Rationale: ECCO's requirement that campaign vendors be paid within 180 calendar days is intended to avoid situations where unpaid campaign debts essentially become in-kind contributions to a candidate. In addition, the 180-day limit is intended to discourage candidates from engaging in deficit spending in the hopes of collecting enough contributions after the election to retire their debts. (As discussed above, contributions made after an election create the appearance that the contributor is attempting to curry favor with the newly-elected official.) These public policy interests are not relevant to committees that are not controlled by a candidate.


**Fundraising Disclosure by Lobbyists (SDMC § 27.4002):**

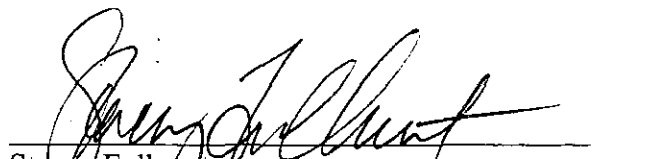
Proposed changes: The Ethics Commission's proposals include an amendment to the Municipal Lobbying Ordinance that would increase the fundraising disclosure threshold for lobbyists from \$1,000 to \$4,000.

Rationale: As discussed above, the Commission has proposed increasing contribution limits to \$1,000 for both district and citywide candidates. The City's Municipal Lobbying Ordinance currently requires lobbying firms and organization lobbyists to disclose fundraising activities that result in the raising of \$1,000 or more for City candidates. This \$1,000 threshold was based on the City's current contribution limits of \$270 and \$320. If the City Council concurs with the recommendation to increase contribution limits to \$1,000, it would be appropriate to also considering raising the fundraising disclosure threshold so that it is not triggered by a single contribution. The Ethics Commission recommends increasing the threshold amount to \$4,000 to correspond with the approximately fourfold increased in the proposed contribution limits.

All the changes discussed above have been incorporated into the proposed clean and strikeout versions of the Ordinance that accompany this report, and which are attached hereto as separate documents. The proposed Ordinance, if approved by the City Council, would go into effect on January 1, 2009, and would be applicable only to elections occurring after that date. For example, candidates running for office in a 2010 election would be able to accept \$1,000 contributions (if this amount is approved by the Council), but candidates in the upcoming 2008 general election would not be able to accept additional contributions in 2009 from contributors who have already given them the maximum amount under the limits currently in effect.

We look forward to the City Council considering these proposed changes as soon as docketing of this issue is feasible. If you have any questions, please contact Stacey Fulhorst at your convenience.

  
Guillermo Cabrera  
Chair, San Diego Ethics Commission

  
Stacey Fulhorst  
Executive Director, San Diego Ethics Commission

cc: Catherine Bradley, Chief Deputy City Attorney  
Kris Michel, Deputy Chief Community & Legislative Services

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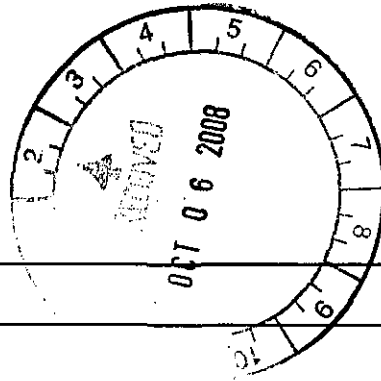
## Proposed Revisions to the Election Campaign Control Ordinance

(and related revisions to the Lobbying Ordinance)

Proposed to be effective January 1, 2009

City Council Presentation

October 6, 2008



### Increase Contribution Limits

- ❖ Increase contribution limits to \$1,000 per election for district and citywide candidates
- ❖ Maintain biennial indexing, but round to nearest \$50
  - ✓ Negligible increases since 1973 have not kept pace with campaign costs
  - ✓ Increased limits will help candidates amass enough money to effectively communicate with voters
  - ✓ Increased limits will help candidates retain experienced campaign professionals
  - ✓ Increased limits are not so high as to disenfranchise smaller contributors
  - ✓ Increased limits are not so high as to corrupt or create the appearance of corruption

### Corresponding Increase to Lobbyist Fundraising Disclosure

If contribution limits are increased, the fundraising disclosure threshold in the Lobbying Ordinance should be adjusted proportionately

- ❖ The current fundraising disclosure threshold for lobbyists is \$1,000 (current contribution limits are \$270 / \$320)
- ❖ If limits are increased to \$1,000, fundraising disclosure threshold should be increased to \$4,000

### Additional Filing Requirement

Require City candidates to file a third pre-election campaign statement on the Friday before a Tuesday election covering the period through the Thursday before the election.

- ❖ Currently, candidates do not disclose activity for the 16 days before an election until well after the election
- ❖ This amendment is less onerous than twenty-four hour filing and will provide the public with additional information before election day

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### Restrictions on Time Periods of Contributions

Exempt a candidate's own contributions from the 180-day post-election fundraising time limit

- ❖ The time limit provision was intended to address corruption issues applicable to third party contributions
- ❖ This amendment will enable candidates to pay for outstanding campaign debts and recurring administrative expenses

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### Professional Expense Fund

- ❖ Enact a series of amendments to recognize recent change in state law permitting local candidates to create separate committees and bank accounts for legal defense purposes
- ❖ Implement the following policy changes:
  - ✓ Change "legal defense fund" to "professional expense fund" (except where state law requires the former term to be used)
  - ✓ Increase the contribution limit (mirror the limit for campaign contributions)
  - ✓ Eliminate exclusivity provision
  - ✓ Permit extension of six-month termination clause

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### Telephone Communications

- ❖ Add the "paid for by" and "authorized by" disclosures now required by state law
- ❖ Maintain the "on behalf of" disclosure, but only for campaign volunteers
- ❖ Delete the exemption for member communications by non-political parties
- ❖ Extend the identification requirement to all calls made by candidates and political committees for advocacy or polling purposes
  - ✓ Ensures that City's laws will not be less strict than state laws
  - ✓ Will avoid ambiguity between true polls and "push polls"

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### Housekeeping Amendments

- ❖ Modify definition of "committee" to include independent expenditure committees
- ❖ Add definition of independent expenditure committee
- ❖ Clarify that duty to have campaign treasurer, and rules regarding authorizations by treasurer, apply only to candidates and "recipient" committees
- ❖ Incorporate reference to FPPC Regulation regarding required contributor information
- ❖ Delete requirement that missing contributor information must be obtained in writing within 10 business days
- ❖ Clarify that lawful use of campaign funds is governed by the entire Political Reform Act

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### Housekeeping Amendments, cont.

- ❖ In surplus funds rules, clarify that only vendor debts (not candidate loans) are subject to vendor debt rules.
- ❖ Delete existing rules regarding recordkeeping and incorporate applicable FPPC Regulation
- ❖ Eliminate current provision stating that a contribution is not "received" until all contributor information is obtained
- ❖ Incorporate FPPC Regulation regarding the return of general election contributions and the apportionment of costs between elections
- ❖ Amend provision regarding reimbursement prohibition notice to clarify that remedial action must take place before the election
- ❖ Clarify that vendor debt laws only apply to candidates and their controlled committees

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### Effective Date

The Ordinance would go into effect on January 1, 2009, but would not affect candidates currently in the midst of an election campaign. Candidates seeking office in the November 2008 election would not be:

- ❖ subject to any new filing requirements
- ❖ subject to any new recordkeeping rules
- ❖ entitled to collect additional contributions in excess of the \$270/320 limits currently in place

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### Proposed Revisions to the Election Campaign Control Ordinance

*(and related revisions to the Lobbying Ordinance)*

Proposed to be effective January 1, 2009

City Council Presentation

October 6, 2008

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000319

REQUEST FOR COUNCIL ACTION  
CITY OF SAN DIEGO1. CERTIFICATE NUMBER  
(FOR AUDITOR'S USE) 55  
10/21TO:  
CITY ATTORNEY2. FROM (ORIGINATING DEPARTMENT):  
ETHICS COMMISSION

09/12/08

## 4. SUBJECT:

Amendments to the Election Campaign Control Ordinance and Municipal Lobbying Ordinance

5. PRIMARY CONTACT (NAME, PHONE &amp; MAIL STA.)

Stacey Fulhorst; 533-3476; MS615E

6. SECONDARY CONTACT (NAME, PHONE &amp; MAIL STA.)

Stephen Ross; 533-3476; MS615E

7. CHECK BOX IF REPORT TO  
COUNCIL IS ATTACHED ☒

## 8. COMPLETE FOR ACCOUNTING PURPOSES

FUND	DEPT.	ORGANIZATION	OBJECT ACCOUNT	JOB ORDER	C.I.P. NUMBER	AMOUNT	9. ADDITIONAL INFORMATION / ESTIMATED COST:

## 10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>Stacey Fulhorst</i>	9/12/08	8	DEPUTY CHIEF		
2				9	COO		
3				10	CITY ATTORNEY		
4	LIAISON OFFICE			11	ORIGINATING DEPARTMENT	<i>Stacey Fulhorst</i>	9/24/08
5					DOCKET COORD:		COUNCIL LIAISON:
6					<input checked="" type="checkbox"/> COUNCIL PRESIDENT	<input type="checkbox"/> SPOB	<input type="checkbox"/> CONSENT <input checked="" type="checkbox"/> ADOPTION
7					<input type="checkbox"/> REFER TO:		COUNCIL DATE: 10/6/08

11. PREPARATION OF:

☐ RESOLUTION(S)☒ ORDINANCE(S)☐ AGREEMENT(S)☐ DEED(S)

An ordinance amending provisions of the Election Campaign Control Ordinance and the Municipal Lobbying Ordinance in the San Diego Municipal Code.

11A. STAFF RECOMMENDATIONS:

Approve changes to the Municipal Code.

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S):

COMMUNITY AREA(S):

ENVIRONMENTAL IMPACT:

HOUSING IMPACT:

OTHER ISSUES:

RECEIVED  
CITY COUNCIL OFFICES  
2008 SEP 24 AM 10:53

000321

**EXECUTIVE SUMMARY SHEET**  
CITY OF SAN DIEGO

DATE ISSUED: September 12, 2008  
ATTENTION: San Diego City Council  
ORIGINATING DEPARTMENT: Ethics Commission  
SUBJECT: An ordinance amending the Election Campaign Control Ordinance and the Municipal Lobbying Ordinance in the Municipal Code  
CONTACT/PHONE NUMBER: Stacey Fulhorst / 533-3476

REQUESTED ACTION:

Adopt the Ordinance amending the Election Campaign Control Ordinance and the Municipal Lobbying Ordinance

STAFF RECOMMENDATION:

Adopt the Ordinance

EXECUTIVE SUMMARY:

The proposed amendments to the Municipal Code are reflected in the attached Ordinance, Strike-Out Ordinance, and City Attorney Digest. The proposed reforms are described in detail in the attached memo from Guillermo Cabrera and Stacey Fulhorst dated September 9, 2008. In summary, the amendments would increase the City's contribution limits, add an additional pre-election filing for City candidates, modify the rules governing professional expense committees, modify the telephone communications requirements to maintain consistency with state law and to include calls made by candidates or political committees for polling purposes, and implement a series of housekeeping amendments. Changes to contribution limits in the Election Campaign Control Ordinance necessitate a corresponding change to the fundraising activities disclosure provisions in the Lobbying Ordinance.

FISCAL CONSIDERATIONS:

None

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

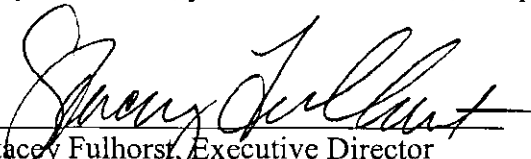
Approved by the Rules Committee on June 11, 2008, and September 3, 2008

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Public discussion at ten Ethics Commission meetings from October of 2007 through August of 2008.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

City candidates, political committees, campaign treasurers, and persons required to register as lobbyists.

  
Stacey Fulhorst, Executive Director  
City of San Diego Ethics Commission

000323

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

EFFECTIVE DATE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 29 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 27.2903, 27.2911, 27.2912, 27.2916, 27.2917, 27.2924, 27.2925, 27.2930, 27.2935, 27.2936, 27.2937, 27.2938, 27.2939, 27.2945, AND 27.2960; RETITLING AND AMENDING SECTIONS 27.2965, 27.2966, 27.2967, 27.2968, AND 27.2969; AND AMENDING SECTION 27.2971, RELATING TO THE CITY OF SAN DIEGO ELECTION CAMPAIGN CONTROL ORDINANCE; AND AMENDING CHAPTER 2, ARTICLE 7, DIVISION 40 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.4002, RELATING TO CAMPAIGN FUNDRAISING DISCLOSURES UNDER THE CITY'S MUNICIPAL LOBBYING ORDINANCE.

*This ordinance makes changes to Chapter 2, Article 7, Division 29 of the San Diego Municipal Code, which contains the City's Election Campaign Control Ordinance [ECCO]. It makes a number of substantive changes to ECCO, particularly in the area of contribution limits, legal defense funds, telephone communications, and pre-election campaign filing requirements.*

*Under the ordinance, contribution limits will be raised to \$500 per candidate per election. The same limit will apply to district and citywide elections. Contribution limits will continue to be subject to biennial indexing to reflect changes in the Consumer Price Index for San Diego, but indexing will not take place until 2011, two years after this ordinance goes into effect.*

*This ordinance imposes an additional pre-election campaign filing requirement on City candidate committees. Under the ordinance, a City candidate committee would be required to file a pre-election statement on the Friday before a Tuesday election, covering the period through the Thursday before the election.*



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With regard to a candidate's solicitation and acceptance of funds to defray the costs of responding to an audit or a legal proceeding, this ordinance will make ECCO consistent with recently adopted Government Code section 85304.5 and Fair Political Practices Commission [FPPC] Regulation 18530.45. State law now allows candidates and elected officeholders to maintain a second committee and bank account for audit and legal defense purposes. This ordinance amends ECCO to recognize this ability by creating a new definition for "professional expense committees" and imposing rules on such committees that are consistent with the establishment procedures, recordkeeping obligations, and reporting requirements that exist in state law. This ordinance makes a non-substantive change by generally referring to these funds as "professional expense funds" instead of "legal defense funds," but also incorporates the state law requirement that the formal name of the committee include the words "legal defense fund" when identified on its Statement of Organization.

This ordinance removes from ECCO the now unnecessary language that required legal defense contributions to be tracked within an existing campaign committee. The ordinance clarifies that *only individuals can make contributions to a professional expense committee*; maintains the current filing schedule for these types of committees; allows candidates and elected officeholders to raise funds for audits and legal defense purposes using regular campaign contributions; and clarifies the allowable purposes for which leftover professional expense funds may be used. Because the City's professional expense fund provisions may not be less strict than those contained in Government Code section 85304.5, the ordinance has removed from ECCO those provisions that allowed leftover funds to be paid to the City Treasurer for deposit in the General Fund. State law does not allow such funds to be disposed of in this manner.

The ordinance also raises the legal defense contribution limit to be equal to the dollar amount of the limit in effect for regular campaign contributions. Under the ordinance, professional expense contributions are limited to the specified dollar amount on a per matter per calendar year basis, and as the regular campaign contribution limit is biennially raised through indexing in accordance with

000325

Municipal Code section 27.2937, the contribution limit for professional expense funds will simultaneously be increased to match the indexed dollar amount.

With respect to telephone communications, this ordinance will create a new definition for "mass telephone communications," which are telephone calls made by candidates and political committees to 500 or more individuals or households that expressly advocate for a City of San Diego candidate or ballot measure or that mention or refer to a candidate or ballot measure in a poll. To maintain consistency with the recent adoption of FPPC Regulation 18440, the ordinance requires that candidates and committees include a "paid for by" disclosure when paying for such communications unless using volunteers, and an "authorized by" disclosure when another entity is making the communication at the behest of the candidate or committee. This ordinance maintains the current requirement that volunteers engaging in these kinds of telephone communications make an "on behalf of" disclosure when a candidate or committee has paid for the resources used to make the calls.

This ordinance would exempt a candidate's personal funds from the City's 180-day post-election fundraising time limits; add new definitions for "independent expenditure committee," "mass telephone communications," and "professional expense committee;" amend the definition of "committee" to add "independent expenditure committee" to clarify that ECCO applies to such committees; clarify that the duty to have a campaign treasurer applies only to recipient committees; incorporate FPPC Regulation 18401 to ensure that state and local recordkeeping requirements are consistent; eliminate the requirement that missing contributor information be provided in writing within ten days; clarify that the 180-day vendor debt rules do not apply to candidate loans or committees not controlled by a candidate; remove language that conflicts with state law with regard to when a contribution is "received"; incorporate FPPC Regulation 18531.2 regarding the apportionment of expenditures between a primary and general election; and provide that a violation of SDMC section 27.2945 may be remedied only before the applicable election.

This ordinance would also make changes to the dollar threshold associated with campaign fundraising disclosures under the City's Lobbying Ordinance. To correspond with the campaign contribution limit increase in ECCO, the Lobbying Ordinance would increase from \$1,000 to \$2,000 the threshold under which fundraising activity must be reported on a Lobbying Firm's or Organization Lobbyist's disclosure statements.

If adopted, this ordinance would take effect and be in force on January 1, 2009, except that the amendments to section 27.2925 (recordkeeping), sections 27.2935 and 27.2936 (contribution limits for candidate elections) shall be applicable only to elections occurring after January 1, 2009, and the amendments to section 27.4002 (fundraising disclosure threshold for lobbyists) shall be applicable only to fundraising that takes place on or after January 1, 2009.

CMB:als  
09/30/08  
10/06/08REV.  
Or.Dept:Ethics  
O-2009-42

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 29 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 27.2903, 27.2911, 27.2912, 27.2916, 27.2917, 27.2924, 27.2925, 27.2930, 27.2935, 27.2936, 27.2937, 27.2938, 27.2939, 27.2945, AND 27.2960; RETITLING AND AMENDING SECTIONS 27.2965, 27.2966, 27.2967, 27.2968, AND 27.2969; AND AMENDING SECTION 27.2971, RELATING TO THE CITY OF SAN DIEGO ELECTION CAMPAIGN CONTROL ORDINANCE; AND AMENDING CHAPTER 2, ARTICLE 7, DIVISION 40 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.4002, RELATING TO CAMPAIGN FUNDRAISING DISCLOSURES UNDER THE CITY'S MUNICIPAL LOBBYING ORDINANCE.

WHEREAS, pursuant to San Diego Municipal Code section 26.0414, the City of San Diego Ethics Commission has the responsibility of regularly reviewing the City's Election Campaign Control Ordinance [ECCO], and proposing updates to those laws to the City Council for its approval; and

WHEREAS, ECCO limits the amount of contributions that an individual may give to a campaign committee to support or oppose a candidate in a City of San Diego election; and

WHEREAS, ECCO's contribution limits are intended to balance the City's interest in reducing the potentially corrupting effect of giving money to a candidate against the candidate's interest in amassing the resources necessary for effective campaign advocacy; and

WHEREAS, ECCO's contribution limits have been increased only nominally since 1973, and have not kept pace with the costs associated with effective campaign advocacy; and

WHEREAS, increasing contribution limits will benefit the electoral process, including helping challengers mount more effective campaigns against incumbent officeholders, and reducing the dependency of candidates on special interest groups that make independent expenditures and member communications, while still serving to combat corruption and the appearance of corruption in City elections; and

WHEREAS, ECCO's rules regarding a candidate's or elected officeholder's acceptance of funds to offset the costs associated with audits and the defense of civil, criminal, and administrative proceedings must be amended to come into compliance with recently adopted state laws, which now allow the creation of a separate committee and separate bank account for such funds; and

WHEREAS, ECCO's rules regarding the identification of committees making telephone communications to support or oppose a candidate or ballot measure must be amended to come into compliance with recently adopted state laws; and

WHEREAS, ECCO's rules regarding telephone communications will be strengthened by requiring candidates and committees to identify themselves when making calls for polling purposes, even when those calls do not expressly advocate for or against a candidate or ballot measure; and

WHEREAS, the information available to the public regarding a candidate's pre-election financial activities will be enhanced by a requirement that the candidate file an additional pre-election campaign statement covering the weeks immediately prior to an election; and

WHEREAS, other areas of ECCO may be clarified, streamlined, or otherwise improved by amendment; and

WHEREAS, the Ethics Commission has proposed amending ECCO to increase contribution limits, to strengthen the provisions that pertain to professional expense funds and telephone communications, to increase pre-election campaign disclosures, and to otherwise clarify, streamline, and improve ECCO; and,

WHEREAS, the Ethics Commission believes that an increase in ECCO's contribution limits should be accompanied by a corresponding increase in the reporting threshold for fundraising activities in the City's Municipal Lobbying Ordinance, and has proposed amending the Municipal Lobbying Ordinance to provide such an increase; and

WHEREAS, the City Council concurs with the proposal recommended by the Ethics Commission; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is hereby amended by amending sections 27.27.2903, 27.2911, 27.2912, 27.2916, 27.2917, 27.2924, 27.2925, 27.2930, 27.2935, 27.2936, 27.2937, 27.2938, 27.2939, 27.2945, and 27.2960 to read as follows:

**§27.2903 Definitions**

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 et seq.) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

*Agent to Clearly identified measure* [no change in text]

*Committee* means any *person* acting, or any combination of two or more *persons* acting jointly, who raise \$1,000 or more, or make *independent expenditures* of \$1,000 or more, within a single calendar year on behalf of or in opposition to a candidate or for the qualification to the ballot or adoption or rejection of one or more ballot *measures*.

*Committees* include *controlled committees, independent expenditure committees, primarily formed recipient committees, and general purpose recipient committees.*

*Contribution to Independent expenditure* [no change in text]

*Independent expenditure committee* means any *person* who makes *independent expenditures* totaling \$1,000 or more within a single calendar year.

*Mass campaign literature* [no change in text]

*Mass telephone communications* means live or recorded telephone calls to 500 or more individuals or households in connection with the same *election* for the purpose of (a)

000330

supporting or opposing a *clearly identified candidate* or a *clearly identified measure*; or (b) conducting a poll that mentions or refers to a *clearly identified candidate* or a *clearly identified measure*.

*Measure to Primarily formed recipient committee* [no change in text]

*Professional expense committee* means a committee created and controlled by an elected *City Official* or *candidate* for the purpose of receiving and spending funds to defray the *professional fees and costs* incurred in the *City Official's* or *candidate's* response to an audit or the legal defense of one or more civil, criminal, or administrative proceedings.

*Professional fees and costs* means expenses related to the retention of an attorney, treasurer, fundraiser, or any other *person* retained to perform services reasonably related to the purpose for which a *professional expense committee* is created.

#### **§27.2911 Duty to Have Campaign Treasurer**

Every *candidate* and every recipient *committee* shall have a *treasurer*. A *candidate* may designate himself or herself as *treasurer*. A committee may designate an *assistant treasurer* to perform the duties and responsibilities of the *treasurer* in the event of a temporary vacancy in the office of the *treasurer* or in the event the *treasurer* is unavailable. Only an individual may be designated as a *treasurer* or *assistant treasurer*.

#### **§27.2912 Authority of Treasurer**

It is unlawful for any *expenditure* to be made by or on behalf of a recipient *committee* without the express authorization of the *treasurer*. It is unlawful for any *contribution* to be accepted by a recipient *committee* or any *expenditure* to be made on behalf of a recipient *committee* at a time when the office of *treasurer* is vacant.

**§27.2916 Campaign Contribution Checking Account**

- (a) Every *controlled committee* that accepts *contributions* and every *primarily formed recipient committee* shall establish one campaign checking account at an office of a bank or other *financial institution* providing checking account services located in the *City of San Diego*.
- (b) Upon opening of an account, the name of the bank or other financial institution and account number thereof shall be filed with the *City Clerk* on the same forms and in the time and manner required by California Government Code sections 81000 *et seq.*
- (c) All *contributions* of money or checks, or anything of value converted by such *committee* to money or a check, shall be placed in the *committee's* checking account within thirty business days, except that no *contribution* shall be deposited to a campaign *contribution* checking account without the receipt by the *committee* of all information required by title 2, section 18401 of the California Code of Regulations.
- (d) Any *contribution* not deposited within thirty business days shall be returned to the contributor as soon as possible after the thirtieth business day, but no later than thirty-five business days after receipt of the *contribution*.

**§27.2917 Lawful Use of Campaign Funds by a Committee**

Uses of campaign funds held by any *committee* formed in accordance with this division shall be governed by title 9 of the California Government Code and title 2, division 6 of the California Code of Regulations. It is unlawful to use campaign funds in any manner that would violate these provisions of California law.

**§27.2924 Surplus Campaign Funds**

- (a) Upon leaving any elected office, or at the end of the post-election reporting period following the defeat of a *candidate* for elective office, whichever occurs last,



000332

campaign funds under the control of a *candidate* shall be considered surplus campaign funds.

(b) After the failure of a recall petition or after the recall election, all remaining *controlled committee* campaign funds shall be considered surplus campaign funds.

(c) Surplus campaign funds shall be used only for the following purposes:

- (1) To pay outstanding campaign debts, as long as any *vendor* debts are paid within the 180-day period set forth in section 27.2960;
- (2) To repay *contributions*;
- (3) To make a donation to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the *candidate*, any member of his or her immediate family, or his or her campaign *treasurer*.
- (4) To make a *contribution* to a political party *committee*, provided the campaign funds are not used to support or oppose candidates for *elective City office*.  
However, the campaign funds may be used by a political party *committee* to conduct partisan voter registration, partisan get-out-the-vote activities, and slate mailers.
- (5) To make a *contribution* to support or oppose any candidate for federal office, any candidate for elective office in a state other than California, or any ballot *measure*.
- (6) To pay for professional services reasonably required by the *candidate* or *committee* to assist in the performance of its administrative functions, including *payment* for attorney's fees for litigation that arises directly out of a *candidate's* activities or his or her status as a *candidate*, including, but not limited to, an action to enjoin defamation, defense of an action brought for a violation of state

000333

or local campaign, disclosure, or election laws, and an action from an election contest or recount.

#### §27.2925 Accounting

- (a) In addition to any other requirements of this division, every *candidate* or *committee* that accepts *contributions* for a *City election* shall maintain records in accordance with the requirements of title 2, section 18401 of the California Code of Regulations.
- (b) The records required by section 27.2925(a) shall be kept by the *candidate* or *committee treasurer* for a period of four years following the date that the campaign statement to which they relate is filed.
- (c) Each *candidate* and *committee* shall deliver, on demand, to any public officer having authority to enforce this division, a written authorization permitting the officer to have access to all records pertaining to the campaign *contribution* checking account.
- (d) Each *candidate* and *committee* shall, on demand, make available to any public officer having authority to enforce this division all records required by this division to be maintained by the *candidate* or *committee*.

#### §27.2930 Base Level of Campaign Statements and Disclosures

Each *candidate* and *committee* shall file campaign statements in the time and manner required by California Government Code sections 81000 et seq. and title 2 of the California Code of Regulations with the following additional requirements:

- (a) All *candidate* and *committee* campaign disclosure statements that are generated from the output of a computer software program shall be generated with the names of all contributors listed in alphabetical order by last name. *Treasurers* for any *committee* that files handwritten campaign disclosure statements shall make reasonable good faith efforts to list the names of all contributors in alphabetical order by last name.

000334

- (b) A *general purpose recipient committee* attributing *contributions* pursuant to section 27.2936 totaling \$100 or more to the same individual for purposes of supporting or opposing a *candidate* in an *election* shall, within six months of the attribution, separately disclose such *contributions* on a campaign statement filed with the City Clerk by supplying all identifying information regarding the contributor, reporting the date of the attribution as the "date received," showing the amount attributed to the individual at that time, identifying the applicable *candidate* and *election* for which the attribution was made, and indicating that the *contribution* is being re-reported per San Diego Municipal Code section 27.2930.
- (c) A *general purpose recipient committee* that submits all of the information required by subsection (b) in a supplemental document attached to a campaign statement filed with the *City Clerk* will be deemed to have complied with the provisions of subsection (b).
- (d) Any payment made by a political party for *member communications* to its members who are registered with that party and that would otherwise qualify as a *contribution* or *expenditure* shall be reported on that political party's campaign disclosure statement in a manner that identifies the payment as a "member communication."
- (e) In addition to any other campaign statement required to be filed pursuant to the California Political Reform Act, every *candidate*, *controlled committee*, and *committee* primarily formed to support or oppose a *candidate*, shall file a pre-election statement on the Friday before any *election* in which the *candidate* is listed on the ballot. This statement shall have a closing date of the Thursday before the *election* and shall cover activity and payments occurring through that day.
- (f) When reporting *contributions* for regularly scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(P)" for all *contributions* that

000335

the contributor has designated for a primary *election*, and shall include the notation “(G)” for all *contributions* that the contributor has designated for a general *election*.

In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation “(P)” for all *contributions* the *candidate* or *committee* has allocated for the primary *election*, and shall include the notation “(G)” for all *contributions* the *candidate* or *committee* has allocated for the general *election*.

- (g) When reporting *contributions* for specially scheduled City candidate *elections*, *candidates* and *committees* shall include the notation “(S)” for all *contributions* that the contributor has designated for a special *election*, and shall include the notation “(R)” for all *contributions* that the contributor has designated for a special run-off *election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation “(S)” for all *contributions* the *candidate* or *committee* has allocated for the special *election*, and shall include the notation “(R)” for all *contributions* the *candidate* or *committee* has allocated for the special run-off *election*.
- (h) In conjunction with making the notations required by subsections (f) and (g), *candidates* and *committees* shall disclose the cumulative amount of *contributions* received from the contributor for each *election*.
- (i) *Sponsors* and *sponsored committees* participating in City *elections* are subject to the reporting obligations set forth in title 2, section 18419 of the California Code of Regulations.
- (j) It is unlawful to fail to comply with the disclosure requirements of California Government Code sections 81000 *et seq.*, the disclosure requirements of title 2 of the California Code of Regulations, and the additional requirements of this section.

**§27.2935 Contribution Limitations**

- (a) It is unlawful for an individual to make to any *candidate* or *committee* supporting or opposing a *candidate*, or for any *candidate* or *committee* supporting or opposing a *candidate* to solicit or accept, a *contribution* that would cause the total amount contributed by that individual to support or oppose the *candidate* to exceed \$500 for any single *election*.
- (b) For purposes of this section, an officeholder who is the subject of a recall *election* is deemed to be a *candidate* seeking elective office, and the *contribution* limits set forth in subsection (a) shall apply to any *payment* made to any *committee* for purposes of supporting or opposing the recall of that officeholder, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.
- (c) Nothing in this section is intended to limit the amount of his or her own money or property that a *candidate* may contribute to, or expend on behalf of, the *candidate's* own campaign.
- (d) The *contribution* limits imposed by this section do not apply to *general purpose recipient committees*, which are discussed in section 27.2936.
- (e) The *contribution* limits imposed by this section do not apply to *contributions* made to a *professional expense committee*, as discussed in sections 27.2965-27.2969.
- (f) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

**§27.2936 Contribution Limitations for General Purpose Recipient Committees**

- (a) *General purpose recipient committees* may participate in *City candidate elections* by using *contributions* from individuals, subject to the *contribution* limits established by this section.

- (b) It is unlawful for any *general purpose recipient committee* to use a *contribution* for the purpose of supporting or opposing a *candidate* unless the *contribution* is attributable to an individual in an amount that does not exceed \$500 per *candidate* per *election*.
- (c) It is unlawful for two or more *general purpose recipient committees* with *shared management* to attribute *contributions* to the same individual for the purpose of supporting or opposing one or more *candidates* seeking *elective City office* if it causes the total amount those *committees* attribute to that individual to exceed the contribution limits set forth in subsection (b).
- (d) A *general purpose recipient committee* that attributes a *contribution* to an individual for the purpose of supporting or opposing one or more *candidates* seeking *elective City office* shall comply with the reporting requirements set forth in section 27.2930(b) and (c).
- (e) For purposes of this section, an officeholder who is the subject of a recall *election* is deemed to be a *candidate* seeking elective office, and the *contribution* limits set forth in subsections (b) and (c) shall apply to any *payment* made to a *general purpose recipient committee* for purposes of supporting or opposing the recall of that officeholder, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.
- (f) This section shall not be construed to limit the amount of money that an individual or any other *person* may give to a *general purpose recipient committee* in the form of *contributions*, dues, donations, fees, or other forms of monetary transactions, but shall be construed to limit the source and amount of *contributions* a *general purpose recipient committee* may use to participate in *City candidate elections*.

- (g) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

**§27.2937 Indexing of Campaign Contribution Limits**

- (a) On a biennial basis commencing in 2011, the *contribution* limits set forth in sections 27.2935 and 27.2936 shall be subject to adjustment.
- (b) The *City Clerk* shall adjust the *contribution* limits to reflect any changes in the Consumer Price Index for the San Diego area for the two-year period ending December 31 of the previous year. Adjustments shall be rounded to the nearest fifty dollars.
- (c) The *City Clerk* shall publish a public notice of any adjustments by March 1, or as soon as practicable, following the Bureau of Labor Statistics's release of the applicable Consumer Price Index data.
- (d) *Contribution* limits adjusted in accordance with this section shall go into effect immediately upon the release of the *City Clerk*'s public notice of the adjustment.
- (e) Notwithstanding subsection (d), adjustments to *contribution* limits shall be effective only with regard to *elections* held in subsequent calendar years, and shall not be construed to raise the *contribution* limits applicable to past *elections* or to *special elections* or *special run-off elections* held in the same calendar year that the limits are adjusted.

**§27.2938 Restrictions on Time Period of Contributions**

- (a) It is unlawful for any *candidate* or *controlled committee* seeking elective *City* office to solicit or accept *contributions* prior to the twelve months preceding the primary *election* for the office sought.
- (b) It is unlawful for any *candidate* or *controlled committee* for *City* office to accept *contributions* more than 180 days after the withdrawal, defeat, or election to office.

000339

*Contributions* immediately following such a withdrawal, defeat, or election and up to 180 days after that date, may be accepted only by a *candidate* or *controlled committee* with outstanding debts or loans, and shall be used only to pay the outstanding debts or loans owed by the *candidate* or *controlled committee*.

- (c) *Contributions* pursuant to subsections (a) and (b) of this provision shall be considered *contributions* raised for the *election* in which the bills and debts were incurred and shall be subject to the *contribution* limits of that *election*.
- (d) The restrictions on accepting *contributions* imposed by this section do not apply to *contributions* made to a *professional expense committee*, as discussed in sections 27.2965-27.2969.
- (e) The restrictions on accepting *contributions* imposed by subsection (a) do not apply to *contributions* for recall *elections*.
- (f) The restrictions on accepting *contributions* imposed by subsection (b) do not apply to *contributions* made by a *candidate* to his or her *controlled committee*.

#### **§27.2939 Pre-Primary Contributions for General Election**

- (a) A *candidate* for *elective City office* may raise contributions for a general election prior to a primary election for the same *elective City office* if the *candidate* sets aside these *contributions* and uses them only for the general election.
- (b) If the *candidate* wins outright in the primary election, is defeated in the primary election, or otherwise withdraws from the general election, the *contributions* raised for the general election shall be refunded to the *contributors* on a pro rata basis less any expenses associated with the raising and administration of general election *contributions*. *Candidates* who are obligated to refund *contributions* raised for the general election shall be subject to the same provisions applicable to candidates for



000340

elective state office under title 2, section 18531.2 of the California Code of Regulations.

- (c) For purposes of this section, a "primary election" includes a *district primary election*, a *citywide primary election*, and a *special election*, and a "general election" includes a *district general election*, a *citywide general election*, and a *special run-off election*.
- (d) The particular *election* for which *contributions* are received shall be reported in accordance with section 27.2930(e) and (f).

#### §27.2945 Notification Regarding Reimbursement Prohibition

- (a) It is unlawful for any *candidate*, or any *committee* supporting or opposing a *candidate*, to solicit *contributions* from potential contributors by distributing printed materials or using an Internet web site unless such materials or site contain at least one instance of the following statement in a prominent place printed in typeface that is easily legible, contrasts with the background, and is not smaller than the typeface used in a majority of the text in the materials or on the site: "It is unlawful for a contributor to be reimbursed by any organization, business, or similar entity for a contribution supporting or opposing a City candidate."
- (b) Upon the discovery by the *candidate* or *committee* that a violation of subsection (a) has occurred, such violation may be remedied by the *candidate* or *committee* submitting written notice reciting the statement required by subsection (a) to all individuals who were sent the materials constituting the violation and to all individuals who made a *contribution* through the web site during the period of violation, and thereafter reporting in writing the nature of the violation and remedial action to the *Enforcement Authority*, provided that the remedial action takes place before the date of the *election* for which the solicitation was made, and no later than fourteen calendar days after the discovery of the violation.

**§27.2960 Extensions of Vendor Credit**

- (a) *Vendors* may extend credit to *candidates* and their *controlled committees* in the ordinary course of business in the same manner they extend it to *persons* for other than *political purposes*.
- (b) A *candidate* or *controlled committee* that accepts goods or services for *political purposes* on credit under subsection (a), shall pay for those goods or services in full no later than 180 calendar days after receipt of a bill or invoice and in no event later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute. For purposes of this subsection, a good faith dispute shall be presumed if the *candidate* or *controlled committee* produces the following:
  - (1) evidence that the *candidate* or *controlled committee* protested the *payment* of a bill no later than 30 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered; and
  - (2) evidence that the protest was based on the quality or quantity of goods delivered or services rendered.
- (c) The provisions of subsection (b) do not apply to debt owed to a financial institution for an outstanding credit card balance.

Section 2. That Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is hereby amended by retitling and amending sections 27. 27.2965, 27.2966, 27.2967, 27.2968, and 27.2969 to read as follows:

**§27.2965 Professional Expense Funds**

- (a) Every elected *City Official* and every *candidate* for *elective City office* shall be permitted to establish and maintain one *professional expense committee* and one

000342

professional expense checking account for the purpose of soliciting, accepting, and spending professional expense funds.

- (b) In addition to *contributions* received in connection with seeking an elective *City* office, any elected *City Official* or *candidate* for *elective City office* may receive professional expense fund *contributions* from individuals, and may use such *contributions* solely for the following purposes:
  - (1) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* response to an audit of his or her campaign activity conducted by the City of San Diego Ethics Commission, the California Fair Political Practices Commission, or the California Franchise Tax Board; or
  - (2) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* legal defense to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the *City Official's* governmental activities and duties.
- (c) It is unlawful for any individual to make, or for any elected *City Official* or *candidate* to solicit or accept from any individual, professional expense fund *contributions* totaling more than the dollar amount established by sections 27.2935(a) and 27.2937 during a single calendar year in connection with an audit or a civil, criminal, or administrative proceeding identified in the Statement of Organization required by section 27.2966(b).
- (d) An individual's *contributions* to a *professional expense committee* do not count toward the campaign *contribution* limits set forth in section 27.2935, and are not subject to the time limits set forth in section 27.2938.

000343

- (e) It is unlawful for any individual to make a *contribution* to a *professional expense committee* without accompanying the *contribution* with a disclosure form identifying the particulars of all matters, if any, that such individual has pending before the board, commission, department, or agency of which the *City Official* or *candidate* maintaining the *professional expense committee* is a member or employee. When filing the campaign statements required by section 29.2967, the *professional expense committee* shall attach to such statement a copy of each disclosure form received pursuant to this subsection.
- (f) It is unlawful for a *person* other than an individual to make a *contribution* to a *professional expense committee*. It is unlawful for a *City Official* or *candidate* to solicit or accept a *contribution* for a *professional expense committee* from any *person* other than an individual.

**§27.2966 Establishment of a Professional Expense Committee and Checking Account; Recordkeeping**

- (a) A *City Official* or *candidate* who raises professional expense funds shall deposit the funds in, and expend the funds from, a professional expense checking account that is separate from any other bank account held by the *City Official* or *candidate*. The checking account shall be established at an office of a bank or other financial institution providing checking account services located in the *City of San Diego*.
- (b) The *City Official* or *candidate* shall establish a *professional expense committee* for the professional expense checking account by filing a Statement of Organization with the Secretary of State and the *City Clerk* pursuant to California Government Code section 84101. The Statement of Organization shall contain a description of the specific audit or civil, criminal, or administrative proceeding or proceedings for which the *professional expense committee* is established, and shall be amended pursuant to

000344

Government Code section 84103 as audits or proceedings are either resolved or initiated. The words "Legal Defense Fund" and the *City Official's* or *candidate's* name shall be included in the name of the *professional expense committee*.

- (c) The *City Official* or *candidate*, and the *treasurer* of the *professional expense committee*, are subject to the recordkeeping requirements set forth in title 2, section 18401 of the California Code of Regulations, and shall keep separate detailed accounts, records, bills, and receipts for each audit and legal proceeding specified in the Statement of Organization filed pursuant to subsection (a), including documentation substantiating the basis for each expenditure made with professional expense funds.
- (d) The records required by section 27.2966(c) shall be kept by the *City Official*, *candidate*, or *treasurer* for a period of four years following the date that the campaign statement to which they relate is filed.

#### **§27.2967 Disclosures by Professional Expense Committee**

- (a) The *professional expense committee* of any *City Official* or *candidate* who is a *candidate* in an upcoming *City election* shall disclose its professional expense fund activity on campaign statements filed in accordance with the schedule prescribed by the Political Reform Act for other *candidate controlled committees* in the *City*.
- (b) The *professional expense committee* of any *City Official* or *candidate* who is not a *candidate* in an upcoming *City election* shall disclose its professional expense fund activity on campaign statements filed quarterly, as follows:
  - (1) No later than April 30 for the period of January 1 through March 31.
  - (2) No later than July 31 for the period of April 1 through June 30.
  - (3) No later than October 31 for the period of July 1 through September 30.
  - (4) No later than January 31 for the period of October 1 through December 31.

000345

**§27.2968 Impermissible Use of Professional Expense Funds**

- (a) It is unlawful for a *City Official* or *candidate* to use any funds in a professional expense checking account to pay a judgment, settlement, fine, sanction, or other type of penalty.
- (b) It is unlawful for a *City Official* or *candidate* to transfer any funds in a professional expense checking account to any other *committee*.

**§27.2969 Conclusion of Audit or Proceeding; Termination of Professional Expense Committee**

- (a) At the conclusion of an audit or legal proceeding identified in a *professional expense committee's* Statement of Organization, and after the payment of all *professional fees and costs* incurred in connection with that audit or proceeding, the *City Official* or *candidate* may use any remaining *contributions* collected for that audit or proceeding to pay outstanding *professional fees and costs* incurred in connection with any other audit or proceeding identified in the *professional expense committee's* Statement of Organization, so long as such *contributions*, when aggregated with all other *contributions* from the same contributor for the same audit or proceeding, do not exceed the *contribution* limits set forth in section 27.2965(c).
- (b) Within six months after the conclusion of all audits and proceedings for which the *professional expense committee* was established, the *City Official* or *candidate* shall refund any remaining funds to contributors on a "last in, first out" or "first in, first out" accounting basis, close the professional expense checking account, and terminate the *professional expense committee* pursuant to title 2, section 18404(b) and (c) of the California Code of Regulations. The Ethics Commission's Executive Director may for good cause extend the termination date. An application to extend the termination date shall be in writing and shall include copies of all supporting documents including copies of any relevant billing statements. The Executive Director shall report to the

000346

Ethics Commission at its next regularly scheduled meeting, or as soon thereafter as practicable, any extensions granted pursuant to this section.

Section 3. That Chapter 2, Article 7, Division 29 of the San Diego Municipal Code is hereby amended by amending section 27.2971 to read as follows:

**§27.2971 Telephone Communications**

- (a) It is unlawful for any *candidate* or *committee* to engage or hire others to engage in *mass telephone communications* unless the communications include a statement that the communications are “paid for by,” “authorized by,” or are otherwise being made “on behalf of” immediately followed by the name of each *candidate* or *committee* that is paying for any of the resources used for the communications or that is otherwise authorizing the communication. For purposes of this subsection, “resources” include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:
- (1) A call is “paid for by” a *candidate* or *committee* when the *candidate* or *committee* pays directly for the call or pays another *person* to make the call on its behalf.
  - (2) A call is “authorized by” a *candidate* or *committee* if a *person* pays for the call at the behest of the *candidate* or *committee* and that *payment* is a *contribution* to the *candidate* or *committee*.
  - (3) Notwithstanding subsections (a)(1) and (a)(2), a call is made “on behalf of” a *candidate* or *committee* when it is made by a volunteer at the direction of the *candidate* or *committee*.
- (b) The statement required pursuant to subsection (a) shall be clearly audible and at the same general volume as the rest of the telephone message.

000347

- (c) If the telephone communication is a recording, the statement required pursuant to subsection (a) shall be played at the same speed as the rest of the message.
- (d) If the telephone communication is paid for by a *controlled committee*, the name of the *candidate* controlling the *committee* shall be included in addition to the information required by subsection (a).
- (e) Any *candidate* or *committee* paying for a live or recorded telephone communication subject to this section shall maintain for four years a transcript of the message being communicated, a copy of any recorded messages, and a record of the number of calls for each message.
- (f) The disclosure requirements set forth in this section shall not apply to a *candidate* personally engaging in a live telephone communication.

Section 4. That Chapter 2, Article 7, Division 40 of the San Diego Municipal Code is hereby amended by amending section 27.4002 to read as follows:

#### **§27.4002 Definitions**

All defined terms in this division appear in italics. Unless the context otherwise indicates, the defined terms have the meanings set forth below.

*Activity expense* to *Expenditure lobbyist* [no change in text]

*Fundraising activity* means soliciting, or directing others to solicit, campaign contributions from one or more contributors, either personally or by hosting or sponsoring a fundraising event, and either (a) personally delivering \$2,000 or more in contributions to a *candidate* or to a *candidate's* controlled committee, or (b) identifying oneself to a *candidate* or a *candidate's* controlled committee as having any degree of responsibility for \$2,000 or more in contributions received as a result of that solicitation.




*Gift to Travel expenses [no change in text]*

Section 5. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 6. This ordinance shall take effect and be in force on January 1, 2009, except that the amendments to section 27.2925 (recordkeeping), sections 27.2935 and 27.2936 (contribution limits for candidate elections) shall be applicable only to elections occurring after January 1, 2009, and the amendments to section 27.4002 (fundraising disclosure threshold for lobbyists) shall be applicable only to fundraising that takes place on or after January 1, 2009.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By

  
Catherine M. Bradley  
Chief Deputy City Attorney

CMB:als  
09/30/2008  
10/06/2008REV.  
Or.Dept:Ethics  
O-2009-42

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of \_\_\_\_\_.

ELIZABETH S. MALAND  
City Clerk

By \_\_\_\_\_  
Deputy City Clerk

Approved: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

000349

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Underline

ORDINANCE NUMBER O-\_\_\_\_\_ (NEW SERIES)

DATE OF FINAL PASSAGE \_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 7, DIVISION 29 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 27.2903, 27.2911, 27.2912, 27.2916, 27.2917, 27.2924, 27.2925, 27.2930, 27.2935, 27.2936, 27.2937, 27.2938, 27.2939, 27.2945, AND 27.2960; RETITLING AND AMENDING SECTIONS 27.2965, 27.2966, 27.2967, 27.2968, AND 27.2969; AND AMENDING SECTION 27.2971, RELATING TO THE CITY OF SAN DIEGO ELECTION CAMPAIGN CONTROL ORDINANCE; AND AMENDING CHAPTER 2, ARTICLE 7, DIVISION 40 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 27.4002, RELATING TO CAMPAIGN FUNDRAISING DISCLOSURES UNDER THE CITY'S MUNICIPAL LOBBYING ORDINANCE

**§27.2903 Definitions**

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions of the Political Reform Act of 1974 (Government Code sections 81000 et seq.) and the definitions contained in the regulations adopted by the Fair Political Practices Commission shall govern the interpretation of this division.

*Agent to Clearly identified measure* [no change in text]

*Committee* means any *person* acting, or any combination of two or more *persons* acting jointly, who raise \$1,000 or more, or make *independent expenditures* of \$1,000 or more, within a single calendar year on behalf of or in opposition to a candidate or for the qualification to the ballot or adoption or rejection of one or more ballot *measures*.

000350

*Committees include controlled committees, independent expenditure committees, primarily formed recipient committees, and-general purpose recipient committees.*

*Contribution to Independent expenditure [no change in text]*

*Independent expenditure committee means any person who makes independent expenditures totaling \$1,000 or more within a single calendar year.*

*Mass campaign literature [no change in text]*

*Mass telephone communications means live or recorded telephone calls to 500 or more individuals or households in connection with the same election for the purpose of (a) supporting or opposing a clearly identified candidate or a clearly identified measure; or (b) conducting a poll that mentions or refers to a clearly identified candidate or a clearly identified measure.*

*Measure to Primarily formed recipient committee [no change in text]*

*Professional expense committee means a committee created and controlled by an elected City Official or candidate for the purpose of receiving and spending funds to defray the professional fees and costs incurred in the City Official's or candidate's response to an audit or the legal defense of one or more civil, criminal, or administrative proceedings.*

*Professional fees and costs means expenses related to the retention of an attorney, treasurer, fundraiser, or any other person retained to perform services reasonably related to the purpose for which a legal defense fund professional expense committee is created.*

#### **§27.2911 Duty to Have Campaign Treasurer**

Every candidate and every recipient committee shall have a treasurer. A candidate may designate himself or herself as treasurer. A committee may designate an assistant treasurer

000351

to perform the duties and responsibilities of the *treasurer* in the event of a temporary vacancy in the office of the *treasurer* or in the event the *treasurer* is unavailable. Only an individual may be designated as a *treasurer* or *assistant treasurer*.

#### **§27.2912 Authority of Treasurer**

It is unlawful for any *expenditure* to be made by or on behalf of a recipient committee without the express authorization of the *treasurer*. It is unlawful for any *contribution* to be accepted by a recipient committee or any *expenditure* to be made on behalf of a recipient committee at a time when the office of *treasurer* is vacant.

#### **§27.2916 Campaign Contribution Checking Account**

- (a) Every *controlled committee* that accepts *contributions* and every *primarily formed recipient committee* shall establish one campaign checking account at an office of a bank or other financial institution providing checking account services located in the City of San Diego.
- (b) Upon opening of an account, the name of the bank or other financial institution and account number thereof shall be filed with the *City Clerk* on the same forms and in the time and manner required by California Government Code sections 81000 *et seq.*
- (c) All *contributions* of money or checks, or anything of value converted by such *committee* to money or a check, shall be placed in the *committee's* checking account within thirty business days, except that no *contribution* shall be deposited to a campaign *contribution* checking account without the receipt by the *committee* of all information required by ~~California Government Code section 84214~~ title 2, section 18401 of the California Code of Regulations. ~~Any information that has not been provided shall be requested, in writing, by the campaign treasurer within ten business days of receipt of the money or check.~~

000352

- (d) Any *contribution* not deposited within thirty business days shall be returned to the contributor as soon as possible after the thirtieth business day, but no later than thirty-five business days after receipt of the *contribution*.

#### §27.2917 Lawful Use of Campaign Funds by a Committee

Uses of campaign funds held by any *committee* formed in accordance with this division shall be governed by title 9, ~~chapter 9.5, article 4~~ of the California Government Code; ~~commencing with section 89510~~ and title 2, division 6 of the California Code of Regulations. It is unlawful to use campaign funds in any manner that would violate these provisions of ~~the California Government Code law~~.

#### §27.2924 Surplus Campaign Funds

- (a) Upon leaving any elected office, or at the end of the post-election reporting period following the defeat of a *candidate* for elective office, whichever occurs last, campaign funds under the control of a *candidate* shall be considered surplus campaign funds.
- (b) After the failure of a recall petition or after the recall election, all remaining *controlled committee* campaign funds shall be considered surplus campaign funds.
- (c) Surplus campaign funds shall be used only for the following purposes:
- (1) To pay outstanding campaign debts, as long as such any vendor debts are paid within the 180-day period set forth in section 27.2960;
  - (2) To repay *contributions*;
  - (3) To make a donation to any bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the *candidate*, any member of his or her immediate family, or his or her campaign *treasurer*.

000353

- (4) To make a *contribution* to a political party *committee*, provided the campaign funds are not used to support or oppose candidates for *elective City office*.  
However, the campaign funds may be used by a political party *committee* to conduct partisan voter registration, partisan get-out-the-vote activities, and slate mailers.
- (5) To make a *contribution* to support or oppose any candidate for federal office, any candidate for elective office in a state other than California, or any ballot *measure*.
- (6) To pay for professional services reasonably required by the *candidate* or *committee* to assist in the performance of its administrative functions, including *payment* for attorney's fees for litigation that arises directly out of a *candidate's* activities or his or her status as a *candidate*, including, but not limited to, an action to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, and an action from an election contest or recount.

#### §27.2925 Accounting

- (a) In addition to any other requirements of this division, every *candidate* or *committee* that accepts *contributions* for a *City election* shall maintain records in accordance with the requirements of title 2, section 18401 of the California Code of Regulations.  
~~maintain a record of each of the following:~~
  - (1) ~~any contribution received by the candidate or committee and deposited into the campaign contribution checking account; and,~~
  - (2) ~~any disbursement made from the campaign contribution checking account.~~
- (b) ~~The records required by section 27.2925(a) shall include, but not be limited to, all of the following:~~

000354

- (1) ~~the name and address of the contributor; and~~
- (2) ~~the amount of the contribution, and the date on which it was received or offered;~~  
~~and~~
- (3) ~~if the contribution is made by check, a legible photocopy of the check; and~~
- (4) ~~if the contribution offered or received consists of cash, an indication that cash~~  
~~was offered or received, and a legible photocopy of the bank deposit slip~~  
~~indicating that the cash contribution was deposited into the campaign~~  
~~contribution checking account; and~~
- (5) ~~legible photocopies or originals of all bank records pertaining to the campaign~~  
~~contribution checking account; and~~
- (6) ~~if a contribution is made by the candidate to his or her own campaign, a~~  
~~statement disclosing the source of the funds; and~~
- (7) ~~if a contribution is of something other than money, a description of what was~~  
~~contributed, a reasonable good faith estimate of the monetary value of the~~  
~~contribution, and the basis for the estimate; and,~~
- (8) ~~for each disbursement made from or check drawn on the campaign contribution~~  
~~checking account, the canceled check, the bank statement showing the~~  
~~disbursement, the name of the payee of each check, an itemized record of the~~  
~~goods or services for which each check is issued or disbursement made, and~~  
~~legible photocopies or originals of any invoices, bills, or other supporting~~  
~~documents for which funds were disbursed.~~

(e)(b) The records required by section 27.2925(a) and (b) shall be kept by the *candidate or committee treasurer* for a period of four years following the date that the campaign statement to which they relate is filed.

- (d)(c) Each *candidate* and *committee* shall deliver, on demand, to any public officer having authority to enforce this division, a written authorization permitting the officer to have access to all records pertaining to the campaign *contribution* checking account.
- (e)(d) Each *candidate* and *committee* shall, on demand, make available to any public officer having authority to enforce this division all records required by this division to be maintained by the *candidate* or *committee*.

#### §27.2930 Base Level of Campaign Statements and Disclosures

Each *candidate* and *committee* shall file campaign statements in the time and manner required by California Government Code sections 81000 et seq. and title 2 of the California Code of Regulations with the following additional requirements:

- (a) All *candidate* and *committee* campaign disclosure statements that are generated from the output of a computer software program shall be generated with the names of all contributors listed in alphabetical order by last name. *Treasurers* for any *committee* that files handwritten campaign disclosure statements shall make reasonable good faith efforts to list the names of all contributors in alphabetical order by last name.
- (b) A *general purpose recipient committee* attributing *contributions* pursuant to section 27.2936 totaling \$100 or more to the same individual for purposes of supporting or opposing a *candidate* in an *election* shall, within six months of the attribution, separately disclose such *contributions* on a campaign statement filed with the City Clerk by supplying all identifying information regarding the contributor, reporting the date of the attribution as the "date received," showing the amount attributed to the individual at that time, identifying the applicable *candidate* and *election* for which the attribution was made, and indicating that the *contribution* is being re-reported per San Diego Municipal Code section 27.2930.



- (c) A *general purpose recipient committee* that submits all of the information required by subsection (b) in a supplemental document attached to a campaign statement filed with the *City Clerk* will be deemed to have complied with the provisions of subsection (b).
- (d) Any payment made by a political party for *member communications* to its members who are registered with that party and that would otherwise qualify as a *contribution* or *expenditure* shall be reported on that political party's campaign disclosure statement in a manner that identifies the payment as a "member communication."
- (e) ~~Contributions shall be reported in a manner consistent with the provisions of title 2, section 18421.1 of the California Code of Regulations, except that a monetary contribution is deemed to have been made or received only after a candidate or committee obtains:~~
  - (1) ~~possession or control of the check or other negotiable instrument by which the contribution is made, and~~
  - (2) ~~possession of all of the information required by California Government Code section 84211.~~

In addition to any other campaign statement required to be filed pursuant to the California Political Reform Act, every candidate, controlled committee, and committee primarily formed to support or oppose a candidate, shall file a pre-election statement on the Friday before any election in which the candidate is listed on the ballot. This statement shall have a closing date of the Thursday before the election and shall cover activity and payments occurring through that day.

- (f) When reporting *contributions* for regularly scheduled *City candidate elections*, *candidates* and *committees* shall include the notation "(P)" for all *contributions* that the contributor has designated for a primary *election*, and shall include the notation

“(G)” for all *contributions* that the contributor has designated for a general *election*.

In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation “(P)” for all *contributions* the *candidate* or *committee* has allocated for the primary *election*, and shall include the notation “(G)” for all *contributions* the *candidate* or *committee* has allocated for the general *election*.

- (g) When reporting *contributions* for specially scheduled City candidate *elections*, *candidates* and *committees* shall include the notation “(S)” for all *contributions* that the contributor has designated for a special *election*, and shall include the notation “(R)” for all *contributions* that the contributor has designated for a special run-off *election*. In instances where the contributor has not designated his or her *contribution* for a particular *election*, the *candidate* or *committee* shall include the notation “(S)” for all *contributions* the *candidate* or *committee* has allocated for the special *election*, and shall include the notation “(R)” for all *contributions* the *candidate* or *committee* has allocated for the special run-off *election*.
- (h) In conjunction with making the notations required by subsections (f) and (g), *candidates* and *committees* shall disclose the cumulative amount of *contributions* received from the contributor for each *election*.
- (i) *Sponsors* and *sponsored committees* participating in City *elections* are subject to the reporting obligations set forth in title 2, section 18419 of the California Code of Regulations.
- (j) It is unlawful to fail to comply with the disclosure requirements of California Government Code sections 81000 *et seq.*, the disclosure requirements of title 2 of the California Code of Regulations, and the additional requirements of this section.

**§27.2935 Contribution Limitations**

- (a) It is unlawful for an individual to make to any *candidate* or *committee* supporting or opposing a *candidate*, or for any *candidate* or *committee* supporting or opposing a *candidate* to solicit or accept, a *contribution* that would cause the total amount contributed by that individual to support or oppose the *candidate* to exceed \$250 \$500 for any single *election* if the ~~candidate is seeking City Council district office, or to exceed \$300 for any single election if the candidate is seeking the office of the Mayor or City Attorney.~~
- (b) For purposes of this section, an officeholder who is the subject of a recall *election* is deemed to be a *candidate* seeking elective office, and the *contribution* limits set forth in subsection (a) shall apply to any *payment* made to any *committee* for purposes of supporting or opposing the recall of that officeholder, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.
- (c) Nothing in this section is intended to limit the amount of his or her own money or property that a *candidate* may contribute to, or expend on behalf of, the *candidate's* own campaign.
- (d) The *contribution* limits imposed by this section do not apply to *general purpose recipient committees*, which are discussed in section 27.2936.
- (e) The *contribution* limits imposed by this section do not apply to *contributions* made to a ~~legal defense fund~~ professional expense committee, as discussed in sections 27.2965-27.2969.
- (f) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

000359

**§27.2936 Contribution Limitations for General Purpose Recipient Committees**

- (a) *General purpose recipient committees* may participate in *City candidate elections* by using *contributions* from individuals, subject to the *contribution* limits established by this section.
- (b) It is unlawful for any *general purpose recipient committee* to use a *contribution* for the purpose of supporting or opposing a *candidate seeking City Council district office* unless the *contribution* is attributable to an individual in an amount that does not exceed ~~\$250~~ \$500 per *candidate per election*.
- (c) ~~It is unlawful for any general purpose recipient committee to use a contribution for the purpose of supporting or opposing a candidate seeking the office of Mayor or City Attorney unless the contribution is attributable to an individual in an amount that does not exceed \$300 per candidate per election.~~
- (d)(c) It is unlawful for two or more *general purpose recipient committees* with *shared management* to attribute *contributions* to the same individual for the purpose of supporting or opposing one or more *candidates seeking elective City office* if it causes the total amount those *committees* attribute to that individual to exceed the contribution limits set forth in ~~subsections~~ subsection (b) and (e).
- (e)(d) A *general purpose recipient committee* that attributes a *contribution* to an individual for the purpose of supporting or opposing one or more *candidates seeking elective City office* shall comply with the reporting requirements set forth in section 27.2930(b) and (c).
- (f)(e) For purposes of this section, an officeholder who is the subject of a recall *election* is deemed to be a *candidate seeking elective office*, and the *contribution* limits set forth in subsections (b) and (c) shall apply to any *payment* made to a *general purpose*

*recipient committee* for purposes of supporting or opposing the recall of that officeholder, regardless of whether such *payment* is made before, during, or after the circulation of a recall *petition*.

(g)(f) This section shall not be construed to limit the amount of money that an individual or any other *person* may give to a *general purpose recipient committee* in the form of *contributions*, dues, donations, fees, or other forms of monetary transactions, but shall be construed to limit the source and amount of *contributions* a *general purpose recipient committee* may use to participate in *City candidate elections*.

(h)(g) The dollar amounts set forth in this section are subject to changes in the Consumer Price Index as described in section 27.2937.

#### §27.2937 Indexing of Campaign Contribution Limits

- (a) On a biennial basis commencing in ~~2007~~ 2011, the *contribution* limits set forth in sections 27.2935 and 27.2936 shall be subject to adjustment.
- (b) The *City Clerk* shall adjust the *contribution* limits to reflect any changes in the Consumer Price Index for the San Diego area for the two-year period ending December 31 of the previous year. Adjustments shall be rounded to the nearest ~~ten~~ fifty dollars.
- (c) The *City Clerk* shall publish a public notice of any adjustments by March 1, or as soon as practicable, following the Bureau of Labor Statistics's release of the applicable Consumer Price Index data.
- (d) *Contribution* limits adjusted in accordance with this section shall go into effect immediately upon the release of the *City Clerk's* public notice of the adjustment.
- (e) Notwithstanding subsection (d), adjustments to *contribution* limits shall be effective only with regard to *elections* held in subsequent calendar years, and shall not be construed to raise the *contribution* limits applicable to past *elections* or to *special*

*elections or special run-off elections* held in the same calendar year that the limits are adjusted.

**§27.2938 Restrictions on Time Period of Contributions**

- (a) It is unlawful for any *candidate or controlled committee* seeking elective *City* office to solicit or accept *contributions* prior to the twelve months preceding the primary *election* for the office sought.
- (b) It is unlawful for any *candidate or controlled committee* for *City* office to accept *contributions* more than 180 days after the withdrawal, defeat, or election to office. *Contributions* immediately following such a withdrawal, defeat, or election and up to 180 days after that date, may be accepted only by a *candidate or controlled committee* with outstanding debts or loans, and shall be used only to pay the outstanding debts or loans owed by the *candidate or controlled committee*.
- (c) *Contributions* pursuant to subsections (a) and (b) of this provision shall be considered *contributions* raised for the *election* in which the bills and debts were incurred and shall be subject to the *contribution* limits of that *election*.
- (d) The restrictions on accepting *contributions* imposed by this section do not apply to *contributions* made to a ~~legal defense fund~~ professional expense committee, as discussed in sections 27.2965-27.2969.
- (e) The restrictions on accepting *contributions* imposed by subsection (a) do not apply to *contributions* for recall *elections*, ~~or for elections occurring in 2006~~.
- (f) The restrictions on accepting *contributions* imposed by subsection (b) do not apply to *contributions* made by a *candidate* to his or her *controlled committee*.

### §27.2939 Pre-Primary Contributions for General Election

- (a) A *candidate* for *elective City office* may raise contributions for a general election prior to a primary election for the same *elective City office* if the *candidate* sets aside these *contributions* and uses them only for the general election.
- (b) If the *candidate* wins outright in the primary election, is defeated in the primary election, or otherwise withdraws from the general election, the *contributions* raised for the general election shall be refunded to the *contributors* on a *pro rata* basis less any expenses associated with the raising and administration of general election *contributions*. Candidates who are obligated to refund contributions raised for the general election shall be subject to the same provisions applicable to candidates for elective state office under title 2, section 18531.2 of the California Code of Regulations.
- ~~(b)~~(c) For purposes of this section, a “primary election” includes a *district primary election*, a *citywide primary election*, and a *special election*, and a “general election” includes a *district general election*, a *citywide general election*, and a *special run-off election*.
- ~~(e)~~(d) The particular *election* for which *contributions* are received shall be reported in accordance with section 27.2930(e) and (f).

### §27.2945 Notification Regarding Reimbursement Prohibition

- (a) It is unlawful for any *candidate*, or any *committee* supporting or opposing a *candidate*, to solicit *contributions* from potential contributors by distributing printed materials or using an Internet web site unless such materials or site contain at least one instance of the following statement in a prominent place printed in typeface that is easily legible, contrasts with the background, and is not smaller than the typeface used in a majority of the text in the materials or on the site: “It is unlawful for a

000363

contributor to be reimbursed by any organization, business, or similar entity for a contribution supporting or opposing a City candidate.”

- (b) Upon the discovery by the *candidate* or *committee* that a violation of subsection (a) has occurred, such violation may be remedied by the *candidate* or *committee* submitting written notice reciting the statement required by subsection (a) to all individuals who were sent the materials constituting the violation and to all individuals who made a *contribution* through the web site during the period of violation, and thereafter reporting in writing the nature of the violation and remedial action to the *Enforcement Authority*, provided that the remedial action takes place before the date of the election for which the solicitation was made, and no later than fourteen calendar days after the discovery of the violation.

#### §27.2960 Extensions of Vendor Credit

- (a) *Vendors* may extend credit to *candidates* ~~or~~ and their controlled *committees* in the ordinary course of business in the same manner they extend it to *persons* for other than *political purposes*.
- (b) A *candidate* or controlled *committee* that accepts goods or services for *political purposes* on credit under subsection (a), shall pay for those goods or services in full no later than 180 calendar days after receipt of a bill or invoice and in no event later than 180 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered, unless it is clear from the circumstances that the failure to pay is reasonably based on a good faith dispute. For purposes of this subsection, a good faith dispute shall be presumed if the *candidate* or controlled *committee* produces the following:



- (1) evidence that the *candidate* or controlled committee protested the *payment* of a bill no later than 30 calendar days after the last calendar day of the month in which the goods were delivered or the services were rendered; and
- (2) evidence that the protest was based on the quality or quantity of goods delivered or services rendered.
- (c) The provisions of subsection (b) do not apply to debt owed to a financial institution for an outstanding credit card balance.

**§27.2965 ~~Legal Defense Fund~~ Professional Expense Funds**

- (a) Every elected *City Official* and every *candidate* for *elective City office* shall be permitted to establish and maintain one ~~legal defense fund~~ professional expense committee and one professional expense checking account for the purpose of soliciting, accepting, and spending professional expense funds.
- (b) In addition to *contributions* received in connection with seeking an *elective City office*, any elected *City Official* or *candidate* for *elective City office* may receive professional expense fund contributions from individuals ~~for a legal defense fund~~, and may use such *contributions* solely for the following purposes:
  - (1) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* response to an audit of his or her campaign activity conducted by the City of San Diego Ethics Commission, ~~or the California Fair Political Practices Commission, or the California Franchise Tax Board~~, or
  - (2) to defray *professional fees and costs* incurred in the *City Official's* or *candidate's* legal defense to one or more civil, criminal, or administrative proceedings arising directly out of the conduct of an election campaign, the electoral process, or the performance of the *City Official's* governmental activities and duties.

000365

- (c) It is unlawful for any individual to make, or for any elected City Official or candidate to solicit or accept from any individual, professional expense fund contributions totaling more than \$250 the dollar amount established by sections 27.2935(a) and 27.2937 during a single calendar year ~~to a legal defense fund~~ in connection with an audit or a civil, criminal, or administrative proceeding identified in a ~~Statement of Purpose filed with the City Clerk pursuant to section 27.2966~~ the Statement of Organization required by section 27.2966(b).
- (d) An individual's *contributions* to a ~~legal defense fund~~ are not subject to professional expense committee do not count toward the campaign *contribution* limits set forth in sections section 27.2935, and are not subject to the time limits set forth in section 27.2938.
- (e) It is unlawful for any individual to make a *contribution* to a ~~legal defense fund~~ professional expense committee without accompanying the *contribution* with a disclosure form identifying the particulars of all matters, if any, that such individual has pending before the board, commission, department, or agency of which the *City Official or candidate* maintaining the ~~legal defense fund~~ professional expense committee is a member or employee. When filing the ~~quarterly~~ campaign statements required by section 29.2967, the ~~City Official or candidate~~ maintaining the ~~legal defense fund~~ professional expense committee shall attach to such statement a copy of each disclosure form received pursuant to this subsection.
- (f) Any ~~legal defense fund established in accordance with sections 27.2965–27.2969~~ must be maintained through a ~~controlled committee~~ the City Official or candidate has organized to seek the office held or sought that is the subject of the civil, criminal, or administrative proceeding.

- (1) ~~It is unlawful for a *controlled committee* to accept a contribution for a legal defense fund unless it is accompanied by a written designation from the contributor indicating that the *contribution* is a *contribution* for the legal defense fund.~~
- (2) ~~*Contributions* collected for a legal defense fund must be deposited in the *controlled committee's* campaign contribution checking account.~~
- (3) ~~*Expenditures* from a legal defense fund must be made from the *controlled committee's* campaign contribution checking account.~~
- (f) It is unlawful for a *person* other than an individual to make a *contribution* to a *professional expense committee*. It is unlawful for a *City Official* or *candidate* to solicit or accept a *contribution* for a *professional expense committee* from any *person* other than an individual.
- (g) ~~Except as set forth in subsection 27.2924(e)(6), sections 27.2965-27.2969 shall constitute the sole authority for soliciting or accepting *contributions* for the costs of responding to an audit or for the defense of an action relating to an election campaign, electoral process, or a *City Official's* conduct in office.~~

**§27.2966 Establishment of a ~~Legal Defense Fund~~ Professional Expense Committee and Checking Account; Recordkeeping**

- (a) ~~Prior to soliciting or accepting any *contributions* for a legal defense fund, the *City Official* or *candidate* shall file with the *City Clerk* a "Statement of Purpose" identifying the specific audit or civil, criminal, or administrative proceeding for which the use of a legal defense fund is sought. A *City Official* or *candidate* seeking to establish or maintain a legal defense fund shall file a separate "Statement of Purpose" for each audit and each civil, criminal, or administrative proceeding for which the use of the legal defense fund is sought.~~

- (b) ~~The legal defense fund shall be named: "The (name of the *City Official or candidate*) Legal Defense Fund."~~
- (c) ~~Any controlled committee accepting contributions for a legal defense fund shall keep a ledger for each audit and for each civil, criminal, or administrative proceeding identified in a Statement of Purpose, detailing all of the legal defense fund's contributions and expenditures for each proceeding. Such ledgers shall be maintained separately from the controlled committee's accounting of contribution and expenditure activity unrelated to the legal defense fund.~~
- (a) A *City Official or candidate* who raises professional expense funds shall deposit the funds in, and expend the funds from, a professional expense checking account that is separate from any other bank account held by the *City Official or candidate*. The checking account shall be established at an office of a bank or other financial institution providing checking account services located in the City of San Diego.
- (b) The *City Official or candidate* shall establish a *professional expense committee* for the professional expense checking account by filing a Statement of Organization with the Secretary of State and the *City Clerk* pursuant to California Government Code section 84101. The Statement of Organization shall contain a description of the specific audit or civil, criminal, or administrative proceeding or proceedings for which the *professional expense committee* is established, and shall be amended pursuant to Government Code section 84103 as audits or proceedings are either resolved or initiated. The words "Legal Defense Fund" and the *City Official's or candidate's* name shall be included in the name of the *professional expense committee*.
- (c) The *City Official or candidate*, and the *treasurer of the professional expense committee*, are subject to the recordkeeping requirements set forth in title 2, section 18401 of the California Code of Regulations, and shall keep separate detailed

accounts, records, bills, and receipts for each audit and legal proceeding specified in the Statement of Organization filed pursuant to subsection (a), including documentation substantiating the basis for each expenditure made with professional expense funds.

- (d) The records required by section 27.2966(c) shall be kept by the City Official, candidate, or treasurer for a period of four years following the date that the campaign statement to which they relate is filed.

**§27.2967 ~~Disclosure of Legal Defense Fund Activity~~ Disclosures by Professional Expense Committee**

- (a) The ~~controlled committee~~ professional expense committee of any City Official or candidate who is a candidate in an upcoming City election shall disclose its legal defense professional expense fund activity on campaign statements filed in accordance with the schedule prescribed by the Political Reform Act for other candidate controlled committees in the City.
- (b) The ~~controlled committee~~ professional expense committee of any City Official or candidate who is not a candidate in an upcoming City election shall disclose its legal defense professional expense fund activity on campaign statements filed quarterly, as follows:
- (1) No later than April 30 for the period of January 1 through March 31.
  - (2) No later than July 31 for the period of April 1 through June 30.
  - (3) No later than October 31 for the period of July 1 through September 30.
  - (4) No later than January 31 for the period of October 1 through December 31.
- (e) ~~The City Official's or candidate's controlled committee shall file separate summary pages and disclosure schedules for all contributions and expenditures made in~~

connection with the legal defense fund, and shall clearly identify the name of the legal defense fund on all such summary pages and disclosure schedules.

**§27.2968 Impermissible Use of Legal Defense Fund Professional Expense Funds**

- (a) It is unlawful for a *City Official* or *candidate* to use any portion of a legal defense fund funds in a professional expense checking account to pay a judgment, settlement, fine, sanction, or other type of penalty.
- (b) It is unlawful for a *City Official* or *candidate* to transfer any portion of a legal defense fund funds in a professional expense checking account to any other *committee.*

**§27.2969 Conclusion of Audit or Proceeding; Termination of Legal Defense Fund Professional Expense Committee**

- (a) ~~Within six months after the conclusion of the audit or of any lawsuits or proceedings for which the legal defense fund was established or maintained, the *City Official* or *candidate* may dispose of any remaining funds in the legal defense fund as follows:~~
  - (1) ~~by paying outstanding *professional fees and costs* incurred in the defense of any proceeding identified in the Statement of Purpose; or,~~
  - (2) ~~by repaying the contributors on a "last in, first out" or "first in, first out" accounting basis; or,~~
  - (3) ~~by making the funds payable to the City Treasurer for deposit in the General Fund of the City.~~
- (b) ~~Within six months after the conclusion of all proceedings for which the legal defense fund was established, the *City Official* or *candidate* shall file with the *City Clerk* a "Legal Defense Fund Termination" statement declaring that the legal defense fund is no longer soliciting or accepting *contributions* for the legal defense fund, will not make further *expenditures* from the legal defense fund, and has properly disclosed all legal defense fund *contributions* and *expenditures.*~~

- (a) At the conclusion of an audit or legal proceeding identified in a *professional expense committee's* Statement of Organization, and after the payment of all *professional fees and costs* incurred in connection with that audit or proceeding, the *City Official* or *candidate* may use any remaining *contributions* collected for that audit or proceeding to pay outstanding *professional fees and costs* incurred in connection with any other audit or proceeding identified in the *professional expense committee's* Statement of Organization, so long as such *contributions*, when aggregated with all other *contributions* from the same contributor for the same audit or proceeding, do not exceed the *contribution* limits set forth in section 27.2965(c).
- (b) Within six months after the conclusion of all audits and proceedings for which the *professional expense committee* was established, the *City Official* or *candidate* shall refund any remaining funds to contributors on a "last in, first out" or "first in, first out" accounting basis, close the *professional expense* checking account, and terminate the *professional expense committee* pursuant to title 2, section 18404(b) and (c) of the California Code of Regulations. The Ethics Commission's Executive Director may for good cause extend the termination date. An application to extend the termination date shall be in writing and shall include copies of all supporting documents including copies of any relevant billing statements. The Executive Director shall report to the Ethics Commission at its next regularly scheduled meeting, or as soon thereafter as practicable, any extensions granted pursuant to this section.

#### §27.2971 Telephone Communications

- (a) It is unlawful for any *candidate* or *committee* to engage or hire others to engage in *mass telephone communications* ~~live or recorded telephone communications with 500 or more individuals or households for the purpose of supporting or opposing a *City candidate* or *City measure*~~ unless the communications include a statement that the

000371

communications are “paid for by,” “authorized by,” or are otherwise being made “on behalf of” immediately followed by the name of each *candidate* or *committee* that is paying for any of the resources used for the communications or that is otherwise authorizing the communication. For purposes of this subsection, “resources” include the purchase of a contact list, the development of a script, overhead expenses, and telephone charges. The type of disclosure required by this section shall be determined as follows:

- (1) A call is “paid for by” a *candidate* or *committee* when the *candidate* or *committee* pays directly for the call or pays another *person* to make the call on its behalf.
  - (2) A call is “authorized by” a *candidate* or *committee* if a *person* pays for the call at the behest of the *candidate* or *committee* and that *payment* is a *contribution* to the *candidate* or *committee*.
  - (3) Notwithstanding subsections (a)(1) and (a)(2), a call is made “on behalf of” a *candidate* or *committee* when it is made by a volunteer at the direction of the *candidate* or *committee*.
- (b) The statement required pursuant to subsection (a) shall be clearly audible and at the same general volume as the rest of the telephone message.
  - (c) If the telephone communication is a recording, the statement required pursuant to subsection (a) shall be played at the same speed as the rest of the message.
  - (d) If the telephone communication is paid for by a *controlled committee*, the name of the *candidate* controlling the *committee* shall be included in addition to the information required by subsection (a).
  - (e) Any *candidate* or *committee* paying for a live or recorded telephone communication subject to this section shall maintain for four years a transcript of the message being



communicated, a copy of any recorded messages, and a record of the number of calls for each message.

(f) The disclosure requirements set forth in this section shall not apply to:

- (1) a *candidate* personally engaging in a live telephone communication, ~~or~~
- (2) ~~member communications made by an organization that is not a political party.~~

#### §27.4002 Definitions

All defined terms in this division appear in italics. Unless the context otherwise indicates, the defined terms have the meanings set forth below.

*Activity expense to Expenditure lobbyist* [no change in text]

*Fundraising activity* means soliciting, or directing others to solicit, campaign contributions from one or more contributors, either personally or by hosting or sponsoring a fundraising event, and either (a) personally delivering \$1,000 \$2,000 or more in contributions to a *candidate* or to a *candidate's* controlled committee, or (b) identifying oneself to a *candidate* or a *candidate's* controlled committee as having any degree of responsibility for \$1,000 \$2,000 or more in contributions received as a result of that solicitation.

*Gift to Travel expenses* [no change in text]

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